INDEX.

tion as to the legality of a city ordinance imposing a penalty, without exceeding the jurisdiction of the court by deciding other matters presented in the case, of which it has no jurisdiction. The jurisdiction of the Supreme Court on appeals, involving the constitutionality or legality, of fines, forfeitures and penalties, under $300 in amount, imposed by municipal corporations, is confined to the question of the constitutionality or legality of such fines, forfeitures and penalties. Const. art. 63. *Penn* v. *First Municipality*, 13.

3. No appeal will lie from a judgment rendered by the mayor of a town, for a sum under three hundred dollars, for an alleged infraction of an ordinance of the corporation, where the only question raised is as to the constitutionality of an act of the legislature vesting judicial power in the officer who rendered the judgment. *Mayor, &c. of Donaldsonville* v. *Richard et al.*, 83.

4. An order by which a rule taken against a sheriff by the plaintiff in an action is made absolute, holding the sheriff to be personally liable to the plaintiff for any judgment that may be rendered therein, in the same manner as certain sureties, taken by him in a bond on which property was released, would have been liable, had they been found good and sufficient, is not a final judgment, nor one from which an appeal can be taken by the sheriff. *Crane* v. *McGrew*, 307.

5. Whatever may be the right of a party to appeal at once from a refusal to set aside a sequestration by which his property is actually detained in legal custody, it cannot be extended to the case of one who has been restored to possession by giving bond. It cannot be said that the judgment works, or may work, an irreparable injury, which is the test by which to determine whether an appeal will lie from an interlocutory judgment before a trial on the merits. *Wilson et al.* v. *Churchman*, 343.

6. No appeal will lie from a judgment overruling a motion to dissolve a sequestration, made by a defendant after he had bonded the property sequestered. Such a judgment is not final, nor does it work any irreparable injury.

7. No appeal will lie from an order refusing to set aside a sequestration, where the question of releasing the property is the only matter for consideration, and the record contains no information as to the value of the property, though the action was on a claim exceeding three hundred dollars. *Lemoine* v. *Garcia*, 366.

8. Where a defendant admits his liability for a part of a claim, and pays that portion into court, for which plaintiffs take judgment, reserving their right to the balance, which is less than the amount necessary to authorize an appeal, the defendant cannot appeal from a judgment against him for the balance.

9. Whenever the constitutionality or legality of a tax imposed by a municipal corporation is in question, an appeal will lie without reference to the amount in dispute; but where the contest is as to the application and execution of an ordinance imposing such a tax, or the liability of an individual to pay it, the right to an appeal depends on the amout in dispute. *Second Municipality* v. *Corning et al.*, 407.

10. A suspensive appeal will not lie from an order discharging a prisoner under a *habeas corpus*, although the imprisonment grew out of proceedings in a civil action. [*King*, J. and *Slidell*, J. dissenting.] *Ex parte Emanuel et al.* 424.

11. Where an account presented by commissioners appointed to liquidate the affairs of a banking company, has been homologated so far as not opposed, the judgment of homologation will be conclusive against a creditor who made no opposition below. An appeal taken by a creditor under such circumstances cannot be entertained, without an assumption of original jurisdiction by the Supreme Court. *Matter of N. O. Improvement and Banking Co.*, 471.

II. *Parties.*

12. Were a plaintiff claims a fourth interest in a slave, and certain persons intervene in the action claiming the other three-fourths, she may appeal from a judgment dismissing the action without making the intervenors parties to the appeal. They might choose to submit to the decree, and she had a right to have her claim considered. *Gibson* v. *White et al.*, 14.

III. *Bond and Surety.*

13. The surety in a bond given for an appeal taken after the lapse of ten days from the notification of judgment, will be bound, in case the appellant be cast, only for costs, though the bond was for an amount large enough for a suspensive appeal, and the surety bound himself, in case the appellant should be cast and fail to satisfy the judgment, "to satisfy whatever judgment may be rendered against him." C.P.578. *Per Curiam:* The bond must be construed with reference to the articles of the Code of Practice applicable to the subject matter.

14. The "costs" for which the surety on a bond given for a devolutive appeal is bound, are the costs both of the lower court and those of the appeal. *Byrne* v. *Riddell et al.*, 3.

15. On an appeal from a judgment in favor of two or more parties, a bond made payable to one of the appellees "*et al.*", will be good. The expression "*et al.*" must be considered as referring to all the other appellees, and the bond will be available to all of them.

16. Where one of two appellees has not been cited, the judgment cannot be touched, so far as he is concerned, but the omission is no obstacle to the consideration of the case as to the party cited, where the interests of the two are separate, and susceptible of being separately determined. *Bacchus* v. *Moreau*, 313.

IV. *Record*

16. After a case has been submitted on the merits, it is too late for the appellee to contest the correctness of the certificate of the clerk that the transcript contains all the evidence offered on the trial. The objection cannot be considered after the implied acquiescence of the appellee in the correctness of the certificate. *Niblett* v. *Scott*, 245.

V. *Motion to Dismiss.*

17. A motion to dismiss, on the ground that the transcript was not filed in time, is not required to be made within three days after the filing of the record. *Dwight, Curator*, v. *McMillen*, 350.

18. A motion to dismiss an appeal, taken by the defendant from a judgment rendered in an action enjoining an execution, on the ground that the principal in the injunction bond was the only obligee in the appeal bond, must be made within three days after the record is filed. *Mitchell* v. *Lay*, 514.

19. *Per Cur:* Under the peculiar circumstances of the case of *Selby* v. *Gibson*, 3 An. 319, the motion to dismiss was properly sustained; but we are not satisfied with all the points which are there ruled, nor are they all indispensable to the decision of the motion. *Ludeling* v. *Frellsen*, 534.

20. Where an actual citation is necessary, and its omission is attributable to the fault of the appellant, the appellee, upon a motion seasonably made, has a right to require the dismissal of the appeal. *Cuddy, et al.* v. *Belleville Iron Works Company*, 582.

VI. *Appeal generally.*

21. A party intending to appeal, in a case in which the testimony was not taken in writing, must require the adverse party, or his counsel, to draw jointly with him a statement of the facts proved in the case: and it is only after the refusal of the adversary to join in making the statement, or on the failure of the parties to agree as to the manner of drawing it up, that the judge can be called on for a statement, and this, though the party desiring to appeal was not present at the trial, either in person or by counsel. C. P. 602, 603. *Castaing* v. *Stone, et al.*, 18.

22. Where a suspensive appeal has been dismissed, on account of the failure to file the record, within three judicial days after the return day, the appellant cannot afterwards take a devolutive appeal from the same judgment. *Ducournau, et al.*, v. *Levistones*, 30.

23. A decision of a court of the first instance on an incidental question, not presented by the pleadings, will not be examined on appeal, unless the evidence on which the court acted is stated in a bill of exceptions, or referred to as making a part of it. *Commissioners of Exchange Bank* v. *Yorke, et al.*, 138.

24. Where no answer has been filed by an appellee, an application to amend the judgment in his favor by allowing him higher damages on the dissolution of an injunction, will not be considered. *Cobb et ux.* v. *Hynes*, 150.

25. An appeal will be dismissed where the matter really in dispute is under three hundred dollars, though damages are claimed to a larger amount, where the claim for damages is evidently fictitious. Such a claim can give no jurisdiction to the court. *Vogel* v. *Retaud, et al.*, 213.

26. An appeal will not be dismissed on the ground of the record's not containing certain evidence adduced on the trial, where the defect was supplied, before the argument of the case, by an authentic copy of the document which was wanting, under an agreement in the court below that a copy should be furnished. The irregularity resulted from the plaintiff's consent, and it would be unjust to permit him to derive any advantage from a state of things he was instrumental in producing. *Herrick* v. *Connant*, p. 376.

27. Where in an action by a police jury, in which the tax-payers of the parish are the real parties in interest, the plaintiffs have not made out their case, but there is reason to believe they can do so if another trial be allowed, the case will be remanded for further proceedings. *Police Jury* v. *McDonogh*, 352.

28. The appeal must be dismissed, where the certificate of the clerk merely states, that, "the record contains all the papers on

file in the suit." C. P., 896. *Dwight, Curator,* v. *Allen, et al.*, 487.

29. A judgment will not be reversed on the ground of its not allowing interest, where the amount of interest was but small, and the omission was not made a special ground for a new trial. *Edelin* v. *Richardson*, 502.

30. Where an appeal is granted on motion in open court, no citation is necessary. *Mitchell* v. *Lay*, 514.

31. Where, in an action for money against a succession, the testimony of the witnesses is not reduced to writing and annexed to the record, and no list is made of such documents as were produced by the parties and not annexed to the record, the appellee may require the case to be remanded. *Pargoud* v. *Breard*, 517.

32. Where no petition and citation of appeal have been served on the appellee, it must appear from the record that the appeal was granted on motion in open court, or it must be dismissed. *Sears, Administratrix* v. *Willson, et al.*, 525.

33. The certificate of the clerk of a district court that, a transcript contains all the proceedings had, documents filed, and evidence adduced, on the trial of a case in which a judgment had been rendered by a court of probates, but in which an appeal was allowed by the district judge, after the court of probates had ceased to exist, where the clerk evidently had no other means of ascertaining the facts in relation to which he certifies, than by an inspection of the original record, in which neither the certificate of the probate judge nor of his clerk, that the record contains all the evidence, nor any list of the documents produced, are to be found, is insufficient, and the case must be remanded. C. P. 1042. *Polk* v. *Childers, Executrix*, 500.

34. It is not necessary that a petition of appeal should contain an express prayer that the appellee be cited, where there is but one antagonist party to be brought before the appellate court. *Per Cur:* We do not say that cases may not occur where it might be necessary to point out, to the ministerial officers, the respective persons whose citation the appellant may desire. Arts. 573, 581 must be construed with reference to the liberal spirit of the stat. of 20 March, 1839; and, in doing so, even if the point be doubtful, the appellant is entitled to the benefit of the doubt. *Ludeling* v. *Frellsen*, 534.

35. An appeal will not be dismissed, where the bond, though insufficient for a suspensive, is large enough for a devolutive, appeal. *Same case*, 534.

36. Decision in *Gardere* v. *Murray*, 5 Mart. N. S. 244, that, if a judgment be signed before the proper time, the party against whom it is rendered, may move for a new trial as though the judgment had not been signed, but if, instead of doing so, he appeals, that he will be thereby precluded from urging that the appeal was not final—affirmed.

37. An appellant, who had been allowed by the judgment appealed from but a dividend on his claim out of the funds for distribution, who contends that the judgment was rendered without evidence, in his absence, and by consent of the other parties, cannot require an amendment of the judgment so as to allow him the whole amount of his claim out of the fund for distribution, on the ground that the other parties, by allowing him a dividend on his claim, recognized its amount. *Per Cur:* The appellant has no right to divide the consent of the other litigants, which was intended by them to facilitate the disposition of the fund in court, and made in a spirit of compromise. *Fretz et al.* v. *Curlisle et al.*, 561.

38. Where one, who had opposed the homologation of a final tableau of distribution presented by an executor, on which a judgment was rendered, approving the payments made by the executor, and allowing all the claims against the succession, except one set up by the opponent, to whom the usufruct of the succession had been bequeathed, against the universal legatee, after the expiration of the usufruct, and ordering another account to be rendered settling the respective rights of the opponents and the universal legatee, appeals as against the universal legatee, from the judgment, without making the executor a party, the appeal must be dismissed. *Succession of Perry*, 577.

39. Where a judgment was rendered and signed by a district court, for the city of New Orleans, during the month of June, an order of appeal granted upon motion in open court, in the month of July following, will not under the Statute of 22d March, 1843, relieve the appellant from the necessity of citing the appellee; such citation being dispensed with only where the motion has been made within the same calendar month in which the judgment was signed. The Statute of 1843 is applicable to the present district courts of New Orleans, not having been repealed by the Statute of 30th April, 1846, organizing those tribunals. *Cuddy* v. *Belleville Iron Works Company*, 582.

ARBITRATORS.

See AMICABLE COMPOUNDERS.

ASSIGNMENT.

See SALE, TRANSFER OF DEBTS.

ATTACHMENT.

1. An attachment will not lie in an action for damages, *ex delicto*. *Holmes et al.* v. *Barclay et al.*, 63.

2. Where a creditor fraudulently obtains possession, in another State, of the property of his debtor, who resided there, and brings it clandestinely into this State, without the consent or knowledge of the debtor, and immediately attaches it, the attachment will be dissolved. The fraudulent act of the plaintiff cannot give jurisdiction to our courts. *Powell* v. *McKee*, 108.

3. Plaintiff, in an action commenced by attachment, will be entitled to a judgment by default, against an absconding debtor, where a copy of the citation and petition were left with the wife of the defendant at his residence. The appointment of a curator *ad hoc* is unnecessary in such a case. *Thomas* v. *Wetzler*, 184.

4. An attachment by a creditor of a fraudulent vendee of real estate, not proved to have had notice of the nature of the vendee's title, levied on the property while in the possession of his debtor, will hold the property against creditors of the fraudulent vendor. *Stockton* v. *Cradick*, 282.

5. An attachment will lie, in an action by the purchaser against the vendor, of a slave, alleged to have absconded from the plaintiff and to have returned to the vendor, who harbored him and refused to give him up, to recover the value of the slave, and of his services during his detention, and damages for expenses incurred on demanding him and for counsel fees. *Per Curiam:* The retention of the slave was a violation of the contract of sale; and the responsibility thereby incurred is not diminished or destroyed by an outrage, perhaps a crime, being added to it. *Crane* v. *Lewis, Sheriff*, 320.

6. Where, in a bond executed for the release of property attached, three persons are named as principals, but the bond is signed by but one of the principals and a surety, the latter will not be bound, in the absence of evidence to destroy the presumption that he expected the three persons named as principals to be bound as such, or to show that he would have any recourse against them, if he paid the amount. *Clements* v. *Cassilly et al.*, 380.

7. Where one who has obtained an attachment against a debtor, subsequently applies for a second attachment on the ground of the insufficiency of the property originally attached, he must show, under oath, the continued existence of the debt and the necessity for the further process asked for, or the application must be rejected.

8. Where a court, from which an attachment had been issued, had acquired a personal jurisdiction of the defendant, it may, upon an affidavit showing the insufficiency of the property attached and the continued existence of the debt, issue a second attachment directed to the sheriff of another parish in which the defendant has property. *Per Cur:* Viewing the attachment as a conservatory measure incident to the main action, there seems no reason why the jurisdiction of the court, for the purposes of attachment, where the debtor is personally cited, should be confined within its territorial limits any more than in the case of a *fi. fa.* upon a judgment *in personam*, which may issue to any parish in the State. *Aliter*, Where the jurisdiction of the court, being exercised only *in rem*, vests solely upon the property attached, in which case the power of the court is confined to its territorial limits. In such a case it acts upon the thing, and not upon the person of its owner. Its jurisdiction is derived from the seizure of the property, and its judgment has no vitality except against the thing thus subjected to its control. *Favrot* v. *Delle Piane*, 584.

ATTORNEY AT LAW.

1. Article 2422 C. C. which prohibits attornies from purchasing litigious rights which fall within the jurisdiction of the courts before which they practice, under the penalty of nullity, and the payment of all costs, damages and interest, is imperative; and the fact that the attorney had no connection with the litigation, and that the purchase appears to have been fair, cannot exempt the purchaser from the operation of that article. *Waterston* v. *Webb, Administrator*, 173.

2. An attorney at law should not be held to a less onerous responsibility than an attorney in fact; and he will be bound to pay interest on any sum remaining in his hands, from the day he becomes a defaulter by delaying to pay it over. C. C. 2984.

3. Attorneys and counsellors at law practising in partnership are equally responsible to their clients for money collected and not paid over, though one of them may have had no participation in that particular transaction. *Dwight, Syndic* v. *Simon et al.*, 490.

4. Decision in the case of *Macarty's Succession*, 3 An. 517, as to the fees of counsel and the character of the evidence by which courts should be governed in de-

ciding on such claims—affirmed. *Succession of Lee*, 579.

ATTORNEY IN FACT.

See MANDATE.

AUDITORS, EXPERTS.

A court has no authority to make any allowance as a fee to an expert, to be taxed among the costs of the suit. Const. art. 71. *Rathbone* v. *Neal*, 563.

AUTHENTICATION.

See EVIDENCE.

BAIL.

See CRIMINAL LAW.

BANKS.

1. An act of the legislature authorizing the reduction of the stock of a bank to the amount paid in at a certain period, accepted by the stock holdors, will exonerate the latter from any liability beyond the amount of the reduced stock, as to creditors who have become so since the reduction.

2. The date of a bank note is no evidence, even against the bank, at the period at which it became the property of the holder; nor can a subsequent holder claim to be vested with the rights of the first holder, so as to consider the debt due to him as dating from the period of the original issue. *Hepburn et al.* v. *Commissioners of Exchange Bank et al.*, 87.

3. Where certain shares of the stock of a bank were attached, and, on a judgment rendered in favor of the plaintiff in attachment, were sold under execution, an intervenor in the attachment suit, who claimed the stock, and was subsequently adjudged to be the owner of it by a superior tribunal, on a writ of error sued out by him, but which did not suspend execution, cannot recover against the bank, the value of the stock, with profits, dividends, &c., for permitting the marshal to transfer the stock to the purchaser of the judicial sale, and for refusing to transfer the shares to him on the ground of their sale and transfer to the purchasers at the marshal's sale; nor will the fact that the stock was sold without appraisement, at a time when an appraisement was not considered necessary, though subsequently adjudged to be so, subject them to liability, there having been no neglect on their part, and they being justified in believing that the public officer acted according to his duty. *Chapman, Assignee* v. *The New Orleans Gas Light Company et al.*, 153.

4. Under the Statutes of 14th and 26th March, 1842, and 5th April, 1843, providing for the liquidation of banking companies, a debtor to a bank was entitled to give in payment the obligations of the bank, without reference to the date at which he acquired them. *Saunders et al., Commissioners, &c.* v. *Smith, Administratrix*, 232.

5. The board of directors of the branch of the Union Bank at Covington, being clothed by the Statute of 2d April, 1832, incorporating the bank, and by the rules and regulations adopted by the board of directors of the mother bank, with such powers only as the charter expressly granted, or such as were necessary and incidental to the accomplishment of the objects contemplated by the charter, in establishing an office of discount and deposit at that place, were limited agents, unauthorized to make a donation of the property of the stockholders; consequently, where the maker of a note owned by the bank made a *cessio bonorum*, the board of directors of the branch could not authorize the cashier to vote for his discharge, thereby abandoning all claim against the insolvent in the event of his coming to better fortune, and discharging the endorser. The bank having acquired a right to a dividend whether a discharge was voted or not, the vote was purely gratuitous—a mere donation, and not binding on the bank. *Union Bank of Louisiana* v. *Jones*, 236.

6. The decision in *Bertoli* v. *Citizens' Bank*, 1 An. 119, that no sale, whether judicial, forced or voluntary, of property mortgaged to the Citizens' Bank, can in any manner affect the rights secured to that institution by the 24th section of its charter, applies to the case of a sale made without the consent of the bank and for a sum insufficient to satisfy their claim. *Alling* v. *Citizens' Bank et al.*, 308.

7. Stockholders of a Bank, appointed commissioners of an election for directors, who have given a certificate of election in favor of certain individuals, will not be allowed to urge, in an action to annul the election, that the votes were illegal, unless they allege they were received through error. Nor will such stockholders be allowed to become relators in a *quo warranto*. *Wiltz et al.* v. *Peters et al.*, 339.

8. The proviso in the Statute of 27th March, 1843, amending article 3333 C. C., which declares that that act shall not apply to certain mortgages in favor of the property banks, is not restricted to stock mortgages executed in favor of those banks, nor to

those made directly to them, but extends to mortgages which have been acquired by subrogation; and where the subrogation was by authentic act, and recorded where similar contracts are required to be recorded, third persons will be affected by notice without any inscription in the books of the recorder of mortgages. [*On this point, the court being equally divided, the judgment below was affirmed.*]

9. The Statute of 27 March, 1843, was intended to enlarge the effect of the Statute of 11 March, 1842, amending art. 3333 C. C. It does not follow because these Statutes are exceptional, that they should be construed strictly. The construction should be such as will advance the object of the legislature. [*On this point, the court being equally divided, the judgment was affirmed.*]

10. Section 19 of the Statute of 9th February, 1836, incorporating the New Orleans Improvement and Banking Company, does not exempt from taxation real estate held by the Company. The exemption extends only to its capital stock.

11. The penalty imposed by section 9 of the Statute of 9th February, 1836, incorporating the New Orleans Improvement and Banking Company, which declares that if the said company shall, at any time, suspend or refuse payment in lawful money of the United States of any of its notes, bills, or obligations, the holder of any such note, bill, or obligation, or person entitled to demand and receive such money, shall be entitled to receive interest thereon from the time of such suspension or refusal, until fully paid, at the rate of twelve per cent a year, cannot be recovered without a demand of payment of each note, and proof of failure to pay, and then only from the date of such demand and failure. The suspension of specie payments by the bank, will not relieve the holder from the necessity of making such a demand, to entitle him to interest at that rate.

12. Where an account presented by commissioners appointed to liquidate the affairs of a banking company, has been homologated so far as not opposed, the judgment of homologation will be conclusive against a creditor who made no opposition below. An appeal taken by a creditor under such circumstances cannot be entertained, without an assumption of original jurisdiction by the Supreme Court. *Matters of the New Orleans Improvement and Banking Company*, 471.

BANKRUPT.

1. The act of Congress of 19 August, 1841, establishing an uniform system of bankruptcy, does not require that an appellant should file, after the decree declaring him a bankrupt, a separate petition for a discharge, under the penalty of nullity of the subsequent action of the court, as against creditors. A prayer for a discharge, in the original petition of the bankrupt, is sufficient. Sec. 4.

2. A plea that defendant had been discharged from his debts, under the Statute of 1841, as a bankrupt, will not be affected by the fact that no order appears in the transcript from the bankrupt court, designating the time and place at which the creditors were required to appear, nor the newspapers in which the publication of notice was to be made. *Per Curiam:* The act requires that the newspapers shall be designated by the court, but not that the designation shall be made by a formal order of record in the case. It might have been made by a general order applicable to all bankrupt notices.

3. Where the judgment of a court, sitting in bankruptcy, declares that the notices required by the Statute of 1841 were published in proper form, such publication must be assumed to be true, by another court called upon to question collaterally the validity of the decree,

4. Section 4 of the Statute of 19 August, 1841, which gives the right of personal notice to a creditor whose residence is known, does not require a formal judicial process, and a return of service by the marshal; the service might have been by letter. The mode of service was a matter to be prescribed by the court, in its discretion.

5. Though a transcript of the proceedings under the bankrupt act of 1841, offered in evidence by one who sets up her discharge under the Statute in defence to an action, does not show personal service on a creditor entitled to it under the act, the decree discharging him will not be declared null on that account.

6. A promise to pay a debt, from which the party had been discharged as a bankrupt, must be express, distinct, and unequivocal. The intention of the bankrupt to bind himself, must be clear. *Linton et al.*, v. *Stanton*, 401.

BILLS OF EXCHANGE AND PROMISSORY NOTES.

I. *Title to, and Transfer.*

1. The transfer of the title to a promissory note is not restricted to the form of an endorsement. It may be assigned by a separate instrument; and the assignee may sue in his own name.

2. Where a note described in a notarial act of assignment corresponds in date, amount, parties, rate of interest, maturity, and in all other respects with the note sued on, with the single exception that the note described in the notarial act is stated therein, to be secured by mortgage while the note held by plaintiff is not *paraphed*, the want of a paraph will not be considered inconsistent with the identity of the notes. *Jones* v. *Elliott*, 303.

3. In an action, by the payees, on a bill endorsed by themselves, and afterwards by a third person, in blank, it is unnecessary to state such endorsements in the petition, or, in the absence of any evidence to impugn the title of the plaintiffs, to prove them on the trial. *Thierry* v. *Laffon*, 347.

II. *Presentment of Protest, Notice, and Waiver of Notice.*

4. Where the death of an endorser is known, notice of protest, put into the post-office, addressed to the deceased, is insufficient; the notice should have been addressed to his executor. But, if the notice reached, or came to the knowledge of the executor, notwithstanding its defective address, the succession would not be discharged. So a notice, under such circumstances, addressed to the deceased, if served on the executor, at his dwelling, is sufficient.

5. Under the Statute of 13th March, 1827, s. 1, the certificate of a notary that, a written notice of protest was served at the domicil of the endorser, in a village named in the certificate, is sufficient, though it do not state the person on whom the service was made. *Louisiana State Bank* v. *Dumartrait et al.*, 483.

6. Where the endorser of a bill payable in this State is not shown to have had, when the bill was presented for acceptance and payment, a permanent residence here, but to have been doing business here during the winter and returning to the north in the summer, a notice of protest addressed to him at the north, during his absence from the State, to the care of a person, to whose care a witness testified that the endorser had requested him to direct his letters, accompanied by proof that he had received a private letter directed to the same address, informing him of the protest, will be sufficient. *McKenzie et al.* v. *Ward*, 572.

III. *Damages on Bills.*

7. The payee of a bill of exchange drawn abroad, payable and protested here, cannot recovor damages against the acceptor. *Thierry* v. *Laffon*, 347.

IV. *The Consideration.*

8. Where, by the terms of a building contract, the price is payable in seven instalments, and the proprietor accepts an order drawn upon him by the undertaker in these words: "accepted, payable according to agreement with the builder, on the last payment I have to make to him according to contract," and, the undertaker after receiving the first instalment, and a second payment in advance, abandons the work, the person in whose favor the order was made cannot recover its amount from the proprietor, who had nothing more to pay to the undertaker. *Saloy* v. *Pepin*, 573.

V. *Evidence.*

9. Parol evidence is admissible to prove the period at which a bill was intended to be payable, which was drawn payable "———months after date," and discounted by a bank without filling up the blank. The testimony does not contradict the instrument, but supplies an omission, which, on the face of the contract, was either an oversight of the parties, or an intentional submission of the term to the discretion of the bank.

10. The cashier is a competent witness for the bank by which he is employed. *Union Bank* v. *Meeker*, 189.

11. In an action on a bill of exchange payable "in current city notes," which plaintiffs aver were, at maturity of the bill, and still are, at *par* and equivalent to specie, where no proof is offered on either side as to their value at maturity or at the time of the trial, judgment must be rendered for the amount payable according to the tenor of the bill, though the notes were below *par* at the maturity of the bill, but at *par* at the time of the trial. It was incumbent on defendants, and not on plaintiffs, to prove the value of the notes at the maturity of the bill, and at the time of the trial. *Wilson et al.* v. *Lambeth et al.*, 351.

12. Parol evidence is admissible to prove the consideration of a due bill, silent as to the consideration. The evidence cannot be considered as contradicting the terms of the written instrument. *Klein* v. *Dinkgrave*, 540.

VI. *Of Bills of Exchange and Promissory Notes generally.*

13. The mere joint ownership of real estate confers no authority upon either of the joint owners to bind the other by a note.

14. To enable one of the members of a partnership formed for the cultivation of land held by them as joint owners, to bind the other by a note made in the partnership name, an express authorization, or one clearly to be implied from the course of business of the firm, is necessary. In the absence of such express or implied authority it is incumbent on the payee to prove that the amount of the note inured to the benefit of the partnership. *Benton* v. *Roberts et al.*, 216.

15. Notes payable to the order of minors, not being transferable by endorsement or delivery so long as the minority lasts, are not subject to the prescription of five years. *Bird* v. *Pate, Administrator*, 225.

16. Where the maker of a note was, before its execution and until his death, a resident of this State, and his succession was opened, and all of his available property situated here, the fact that the note was dated and payable in another State, will not, in an action on the note against his succession here, make the case an exception to the general rule that the *lex fori* governs prescription.

17. A note made payable to certain commissioners, and not to them or their order, though it contains the words "payable and negotiable at the bank of M* * *, at N," is not a negotiable instrument, and, consequently, not prescribed by five years under art. 3505 C. C. *Per Curiam:* The words *negotiable at &c.*, being joined to the word *payable*, must be considered as referring to the place of payment, and perhaps to the currency usual there.

18. To ascertain whether an instrument is prescribed by our laws, its character must be determined with reference to our own jurisprudence. *Young, State Commissioner, &c.* v. *Crossgrove, Administrator*, 233.

19. Minors will not be bound by a promissory note signed by their tutor in his official capacity, in the absence of proof of judicial authority to make the note, or that its consideration inured to their benefit. *Succession of Johnson*, 253.

20. One, not a party to a promissory note, who puts his name on the back, will be bound as a surety.

21. Where two persons, not parties to a promissory note, write their names on its back, being bound as sureties, judgment will be rendered against them, *in solido*, for the whole debt. The obligation of each surety is to pay the whole debt; but this obligation is subject to the right to claim a division. Until this right is exercised, the obligation is *in solido*. C. C. 3018, 3019. *McCausland* v. *Lyons et al.*, 273.

22. One who purchases a bill of exchange from an agent, duly authorized to draw upon his principal, on shipment to the latter of produce purchased for him, has nothing to do with the limitations fixed by the principal as to the price of the produce, unless proved to have been aware of them.

23. Where an agent is authorized to ship to his principal, and to draw on him, "with bill of lading attached," it is unimportant that the bill of lading be not *materially* attached or fastened to the bill of exchange. It is sufficient that the bill of exchange be drawn on the shipment, and that the bill of lading be delivered with it to the purchaser of the bill. *Forman et al.* v. *Walker*, 409.

24. Where a party binds himself to the holder of a note to pay the amount in case he cannot get it out of the maker, the return of the sheriff on a *fi. fa.* against the maker, "that having made diligent search and enquiry, and no property having been found in this parish, it is returned *nulla bona*," will not suffice to authorize a judgment against the surety. *Per Curiam:* The law makes it the duty of the sheriff to call upon the defendant to point out property, and, in case he is unsuccessful, to call upon the plaintiff to do the same thing. Here no such request was made from either, and, *non constat*, that the judgment would not have been paid if a demand had been made of the defendant. *Copley* v. *Richardson*, 512.

25. A payment on account made by the maker of a promissory note to a person not in possession of the note, nor authorized by the owner of the note to receive payment, and which was never received by the owner, will not entitle the maker to a credit for its amount.

26. Where the title of a holder, before maturity, of a negotiable note, is not affected by any reasonable suspicion, a mere partial failure of consideration between the original parties is not sufficient to throw upon him the burden of showing for what value he became the holder. *Tew* v. *Labiche et al.* 526.

BOUNDARY.

See LAND.

BUILDER.

See LETTING AND HIRING OF LABOR, &c.

CESSIO BONORUM.

See INSOLVENCY.

CITATION.

See PRACTICE.

CODES, ARTICLES OF, CITED.

I. *Civil Code.*

ART.	PAGE.	ART.	PAGE.	ART.	PAGE.
25	538	1928	79	2613	356
190	365	1934	206	2615	65
221	305	1960	145	2622	104
230	"	1965	329	2675	144
332	123	"	365	2696	40
335	520	1967	135	2700	"
356	488	1971	"	2743	97
367	375	1982	65	2744	"
454	126	1987	307	2746	"
456	"	1989	36	2807	216
457	"	"	65	2836	330
459	"	"	329	2974	413
517	193	2188	509	2984	"
518	"	2203	157	"	490
524	"	2291	144	3018	273
573	534	2294	79	3019	"
578	389	"	144	3048	42
579	"	2304	79	3204	9
581	534	2367	465	3239	97
827	33	"	569	3257	65
829	"	2380	"	3280	465
858	73	2387	328	3298	227
1035	25	2402	513	3314	"
1037	"	2417	262	3333	471
"	558	2421	65	3347	303
1041	"	2422	173	3374	416
1111	25	2428	293	3384	193
1176	334	2455	400	3387	"
1272	8	2493	128	3411	172
1289	"	2494	"	3505	126
1290	"	2508	51	"	171
1520	36	"	96	3508	136
1733	337	2518	430	"	169
1885	145	2590	242	"	171
1886	"	2612	458	3522	262

II. *Code of Practice.*

ART.	PAGE.	ART.	PAGE.	ART.	PAGE.
42	553	389	212	647	293
166	"	394	"	"	307
175	296	391	206	719	36
189	363	543	106	896	487
275	184	544	"	924	415
279	372	561	401	"	517
280	"	"	544	970	25
295	144	578	3	1018	123
325	52	602	18	1042	500
375	136	603	18		

COMMERCIAL AND COMMON LAW.

See LAW.

COMMON CARRIER.

1. Advances made to the captain and owners of a steamer in the home port, confer no privilege on the party by whom the advances are made unless he be subrogated to the privileges on the claims which were paid by the advance. *Hyde et al.* v. *Culver et al.* 9.

2. Where the master of a steamer, by false representations, induces an agent of a third person to ship merchandize on his boat at a certain freight, and the bill of lading states that the merchandize is taken "with the privilege of re-shipping," and the freight is re-shipped on another boat, and brought to the port of destination, the owner of the merchandize cannot require its delivery before paying the freight due to the boat on which it was so re-shipped, the contract by the master of the second boat having been made in good faith, at a reasonable rate, with a party who held a possession apparently fair, under a bill of lading authorizing a re-shipment. The bad faith of the master of the first boat should not deprive the owners of the second boat of the remuneration due for their labor.

3. Where an agent with whom merchandize had been deposited, disobeys the private instructions of his principal, by shipping it contrary to the orders of the latter, a third person who acted in good faith and in confidence in a contract made as to the merchandize, and possession transferred by the agent, will not be permitted to suffer.

4. Where a bill of lading stipulates for the privilege of re-shipment, a second carrier to whom the merchandize is transferred, will have a lien on the property for his freight. He is not the mere agent of the first carrier. *Walker* v. *Cassaway*, 19.

5. The liability of the owners of any ship, vessel, or other water craft to the owner of any slave illegally carried from one part of the State to another, under the Statute of 26 March. 1835, only exists where the master of the vessel would be subject to the pains and penalties of the Statute of 13 February, 1816.

6. The duty, imposed by the Statute of 13 February, 1816, on the master of a vessel who discovers a fugitive slave on board, to land him at the nearest place, is substantially obeyed by landing him at the nearest place where he can be landed with reasonable facility, and in such a mode as may be best calculated to ensure his safe keeping. It would be unreasonable to require a captain to stop in the night, and to go on shore in search for a justice or other inhabitant, when, by proceeding on his voyage till daylight he could reach a principal

town of the State, where he might provide for the safety of the slave, and give publicity to his elopement. *Botts* v. *Cochrane*, 35.

7. Where the consignees of a vessel, who had had other transactions with the owner, make advances to the captain, for services and supplies furnished to the vessel, for towage, pilotage, custom-house charges, and furnish him with cash for other purposes not shown, and, though informed by the owner of his intention to sell the vessel, take a bill of exchange on him, drawn by the master at thirty days, for the amount, and permit the vessel to depart, they must be considered as having made the advances solely on the personal credit of the owner, and cannot claim any lien, or tacit hypothecation, for the amount advanced, on the vessel in the hands of the vendee of one who had purchased the vessel while on her voyage to the port to which she was consigned.

8. To authorize the master to hypothecate a vessel by bottomry, it must appear that the advances were made for repairs, or supplies, necessary for the voyage or the safety of the vessel, and that the repairs or supplies could not have been procured on reasonable terms, nor with funds in the master's control, nor upon the credit of the owner independent of the hypothecation. It is essential to the lawful exercise of this power that, no other means of procuring funds, at the place at which they were required, existed.

9. The taking of a bill of exchange upon the owner of a vessel for advances made to the master, or for amounts due to material-men, or wages to seamen, is presumptive evidence that the credit is personal to the owner, and that any lien on the vessel is waived. *Harned* v. *Churchman et al.*, 310.

10. Though, in a contest between two joint owners of a steamer as to the extent of their respective interests, the enrollment, which states merely that the two are sole owners, will raise a presumption, under art. 2836 C. C., that the joint ownership was equal, it may be rebutted by the production of the books and papers of the steamer, which, under the circumstances, are equivalent to a written title in favor of the defendant; and parol evidence of their contents, unless specially objected to as secondary, must receive the same consideration as the books and papers themselves.

11. A part owner of a steamer or vessel, who owns more than half of the vessel, and is in possession, has an undoubted right to employ her in her usual trade, where no objection is made by his co-proprietor. It is only where the owners disagree, that there is any conflict in the jurisprudence of maritime nations on this subject. Nor will this right of employment cease by the death of the co-proprietor, his rights and obligations being transmitted to his heirs.

12. Where one of the part owners of a steamer, in the exercise of his legal rights, continues the steamer in her usual trade, after the death of his co-proprietor, without objection on the part of the heirs or representatives of the deceased, any loss resulting from an explosion of her boilers must be borne by the co-proprietors in proportion to their respective interests, unless it be shown to have resulted from the negligence or misconduct of the surviving part owner. And where, in such a case, the share of the survivor is purchased by a third person after the explosion, who causes the repairs necessary to render the boat fit for navigation to be made in a prudent manner and in good faith, without objection on the part of the heirs or representatives of the deceased, and the repairs are proved to have increased the value of the boat more than their cost, the share of the deceased must, as between the succession itself, and the purchaser, be charged with its proportional part of the costs of the repairs. *Jouanneau, Curator*, v. *Shannon*, 330.

13. A consignee, not a *bonâ fide* purchaser, and who has made no advances on the shipment, but is the mere agent of a consignor who had attempted to defraud his vendor of the price of the merchandize, has no greater rights than the vendee, and cannot defeat the vendor's privilege, where the vendee could not.

14. Where, after the shipment of merchandize and the delivery of bills of lading to the shipper, the merchandize is sequestered at the suit of the vendor claiming a privilege for the price, and the master of the ship gives the consignee prompt notice of the sequestration, and, in the mean time, takes such steps in the case as will arrest the action of the court until the consignee can assert his rights, the master will be excused for not delivering the merchandize, and may recover from the plaintiff in the sequestration an indemnity for his trouble and loss in unloading the goods, &c. But where the master, as agent of the shipowners, bonds the property, after having been notified by the sequestration that the vendor had been defrauded, it will be his duty, on arriving at his port of destination, to inquire into the circumstances of the consignee's title; and if he has any doubt as to it, to protect himself by a bill calling upon the vendor, the consignor and consignee, to litigate their rights among themselves; or, to refuse to deliver the property, if satisfied that the consignee was a mere

agent, and not a consignee for value. Where the master, in such a case, after bonding the property, offers no proof that he has delivered the merchandize, nor that it is not still in his possession, he will be responsible for its value; and where the sequestration is set aside for irregularity, and no recourse can be had upon the bond, a personal judgment will be rendered against him for that value.

15. Though a bill of lading be a negotiable instrument, and import a title to the shipment in the holder, excusing him, as a general rule, from the necessity of proving that he has given any value for it, yet such proof is necessary where evidence has been offered to establish the want, or failure, or illegality of the consideration, or that the bill had been lost or stolen before it came into the possession of the holder. In this respect the exercise of the vendor's privilege under our code is similar to the common law right of stoppage *in transitu*, which can be defeated by the negotiation of the bill of lading only where the transferree has received it in good faith and for value. *Wilson et al.* v. *Churchman*, 452.

16. Where a vessel, in consequence of unseaworthiness existing at the commencement of the voyage, and not from any perils of the sea or accident, is compelled to put into an intermediate port for repairs, where she is kept a much longer time than necessary to prepare her for the completion of her voyage, the owners will be responsible to the freighters for any damage resulting from the delay in the delivery of freight, occasioned by her unseaworthiness and unnecessary detention.

17. Where a vessel is compelled to put into an intermediate port for repairs, it is the duty of the master to cause the repairs to be made without any unnecessary delay, in order to prosecute his voyage to the port of destination. If he wait for orders from the owners of the vessel, the latter will be responsible to the freighters for any damage resulting from the delay.

18. Whatever care and diligence may have been shown in preparing a vessel for her voyage, and in rendering her staunch and strong, yet if, in fact, she was not so, the owners will be responsible for any damage resulting therefrom to the owners of freight, when not shown to have been caused by stress of weather or accident.

19. Where a vessel is compelled to put into an intermediate port for repairs, the burden of proving seaworthiness at the commencement of the voyage is on the owners of the vessel.

20. The value of merchandize at the port of destination is the basis of valuation in contracts of affreightment.

21. A carrier is bound not only to transport goods entrusted to him safely, but to do so within a reasonable time; and he is bound to account for their value such as it may be at the expiration of that time. Neither the acceptance of the goods, nor the subsequent disposal of them, by private sale, by the owner, will be a bar to the action. The ascertaining of the damage sustained by the owner, is a matter resting on the ordinary rules of evidence. *Rathbone et al.* v. *Neal et al.*, 563.

COMMUNITY.

See Husband and Wife.

COMPENSATION.

1. Though a defendant have omitted to plead in compensation in an action against him a debt due to him by plaintiff, he may, on the ground that compensation takes place by mere operation of law, oppose the compensation to any attempt to execute the judgment; and this, though at the time of instituting the suit against him, or of executing it, the claim offered in compensation would otherwise be prescribed, provided that the prescription had not been completed at the time when the debt due by him was payable. *Riddell* v. *Gormley*, 140.

2. Where after a judgment has been rendered, but before it is signed, defendant purchases a judgment rendered against plaintiff for a larger amount, and takes a rule on the latter to show cause why a new trial should not be granted, and why, in case of its refusal, the judgment should not be declared to be extinguished, the rule should be made absolute, and the judgment declared to be extinguished by compensation. C. C. 2203. *Per Curiam:* Plaintiff would have been entitled to an injunction, and no reason has been suggested why affect should not be given to the plea of compensation on the trial of the rule, when the parties were before the court with their evidence. *Pattison et al.* v. *Edmonston et al.*, 157.

3. An amount due to a commissioner, appointed to liquidate a bank under the Statute of 14 March, 1842, for arrears of salary, will be extinguished by compensation, where the bank was a judgment creditor of the commissioner for an equal amount. *Conrey* v. *Copland*, 307.

COMPROMISE.

1. A transaction entered into on documents which are subsequently discovered to be false, is null *in toto*. In such a case it

is immaterial to enquire to what extent those false documents may have been the moving or determining cause of the transaction. C. C. 3048. *The Citizens' Bank* v. *Dennistoun et al.*, 44.

CONFLICT OF LAWS.

1. An action will lie in this State for damages done to the property of the plaintiff by a steamer in another State, though by the laws of the latter the action would be held to be local. Such an action under our laws, is a personal action. *Holmes et al.* v. *Barclay et al.*, 63.

2. In an action in this State for damages for an offence or quasi-offence committed in another State, by the laws of which a jury might have allowed interest on the amount of damages assessed, the plaintiffs may recover interest from judicial demand on the estimation of the damage, where such interest is allowed as a part of the damages. *Same case.* 64.

3. The law of the place where the parties intend, at the time of their marriage, to fix their domicil, when there is no marriage contract or one without any provision in this respect, and when that intention is unequivocally ascertained, and supported by a subsequent removal to the place contemplated, governs the rights resulting from the marriage.

4. Where a marriage is contracted in a State in which the husband was domiciled at the time, and there was no change of domicil, nor any absolute and clear intention to change it, before the receipt by the husband of the property of the wife, the law of the place of the marriage must control the rights of the wife.

5. By the laws of Virginia and Mississippi, money and bank stock bequeathed to a woman subject to the condition of being returned to the estate of the testator, in case of her dying without issue, living at her death, will become the property of her husband by her marriage and the reduction of it into possession by the husband. His obligation to return the amount to the estate of the testator in case of the wife's death without issue living at the time, cannot prevent his acquiring the ownership of her interest, which is personalty.

6. Where money and bank-stock were bequeathed by one who resided and died in the State of Virginia, on the condition of its being returned to his estate in case of the death of the legatee without issue living at the time of her death, and the legatee removes to this State and dies here without issue bequeathing the whole of the property to a third person, the bequest made in Virginia, being valid by the laws of that State, it would be to strain the policy of our laws to an unreasonable extent to refuse to enforce it here, in a contest between the executors of the first testator and the legatee under the will made in this State. *Hayden* v. *Nutt et ux.*, 65.

7. Deeds of trust executed in the Common Law States are regarded by the law of Louisiana, not as sales, but as mortgages. *Tillman, Trustee, &c.* v. *Drake*, 16.

8. Where a deed was executed in another State, by which certain slaves were conveyed in trust to secure the payment of a note payable to the creditor or bearer, the slaves remaining in the possession of the debtor, the trustee cannot, in case of the removal of the slaves to this State, enforce the execution of the trust, nor take possession of the slaves, without proof of the debtor's being in default by the non-payment of the note. Without such proof the trustee would be responsible for any loss sustained by the debtor from a seizure of the slaves. *Per Curiam:* We must not be understood as recognizing the right of trustees to execute trusts created on slaves actually within this State, without the intervention of judicial proceedings. *Gaulden* v. *McPhaul*, 79.

9. What constitutes title and what seizin, or, in the language of our law, the possession as owner of immovable property, must be determined by the law of the place where it is situated, and that is the only law which can determine whether a covenant of title and seizin has been broken or not.

10. A covenant of warranty, in an act of sale executed here, of land in another State, is a contract to be performed in that State, and what amounts to a fulfillment or breach of it must be determined by its laws. *Kling* v. *Sejour et ux.*, 128.

11. Prescription is governed by *lex fori*. *Young, State Commissioner, &c.* v. *Crossgrove, Administrator*, 233; and *Brown* v. *Stone*, 235.

12. An action on a promissory note, commenced by attachment against a non-resident maker, by whom the note was executed in the State of A., where he resided, payable in the State of M., cannot be maintained here after the time required to prescribe the note by our laws, on the ground of the claim not having been prescribed by the laws of M. *Per Curiam:* The maker having lived in A. at the time he became a party to the note, plaintiff could not have contemplated his bringing or keeping himself within the jurisdiction of M., and he cannot be considered as having done any act by which his creditor has been prevented from collecting his debt. *Brown* v. *Stone*, 235.

13. A marriage settlement, executed in another State, where the property was situated and where the parties resided at the time, if valid by its laws, cannot be affected by the subsequent removal of the parties to this State. *Young et al.* v. *Templeton et al.*, 254.

CONSTITUTION.

I. *Of State*, 1812.

II. *Of State*, 1845.

CONSIGNEE.

See MANDATE.

CONTINUANCE.

See PRACTICE.

CONTRACTS.

See OBLIGATIONS.

CORPORATIONS.

1. An assessment by a city corporation to contribute to the expense of paving, is not a tax. *City of Lafayette* v. *The Male Orphan Asylum*, 1.

2. The powers vested in police juries and other political corporations must be exercised by ordinances general in their operation. *De Ben* v. *Gerard*, 30.

3. The power to relieve the indigent sick, especially in time of epidemic disease, and to provide for the poor who are unable to labor, is inherent in every municipal corporation. *Vionet* v. *The First Municipality*, 42.

4. Where judgment is rendered in favor of a municipal corporation in an action for the removal of buildings alleged to be on land reserved by law for public road, if the jury find that they are in a public place, and do not come under the provisions of art. 858 C. C., no damages can be allowed to the proprietor.

5. No silence or length of time can deprive a corporation of its power over public places. Its inaction may give an estate by sufferances, but nothing more.

6. A question as to the breadth of land which a municipal corporation has a right to require for the construction of a road and levee is, within certain limits, an administrative question, to be left to the discretion of the local authority. *Mayor, &c. of Thibodeaux* v. *Maggioli*, 73.

7. Though it be conceded that an incorporated company, not empowered by its charter to declare the forfeiture of the shares of stockholders who may be in default by the non-payment of enstallments due for the price of stock, cannot enact, through its board of directors, a by-law subjecting them to such a forfeiture, yet where, after the organization of such a company, a by-law is adopted at a meeting of the stockholders, declaring that the failure to pay any installment due for stock shall operate a forfeiture, in favor of the company, of the shares on which such installments may be due and of all previous payments thereon, and the evidence shows that the by-law received the general acquiescence of the stockholders, a stockholder, whose stock had been declared forfeited under the by-law, and who, though not at the meeting at which the by-law was adopted, is shown to have assented to it, and whose certificates of stock, signed by the president and secretary, and offered in evidence by himself, acknowledging the payment of the first installment, contain, at the bottom of each, a printed copy of the by-law, will not be allowed to recover from the company, on the winding up of its business, the amount paid on his stock. *Per Curiam:* The acceptance of the certificates in the form in which they were delivered, was a tacit acquiescence in, and submission to, the by-law; and it became the law between the party by whom it was accepted and his fellow stockholders. No rule of law forbids the stockholders to form such a convention with each other; it is not forbidden by the terms of the charter, and cannot be held to be against public policy; and, although the silence of the charter is a strong argument against the implication of such a power as an incident to the administration of the corporation, it is no reason for frustrating the wishes and agreement of the stockholders themselves. Regarding the question as one of contract, the stockholder whose shares have been forfeited, has no equitable claim for relief. *Lesseps et ux.* v. *Architects' Co. of New Orleans*, 316.

8. Where the right of parties who represent a corporation is not contested in the court below, it cannot be examined on ap-

peal. *Player* v. *Tarkington, Sheriff, et al.* 396.

9. The power of removing certain municipal officers for negligence or malfeasance, and of declaring their offices vacant and ordering a new election, conferred upon the City Council of Lafayette by sec. 11 of the stat. of 29 April, 1846, to be exercised "by a vote of two thirds of that body," must be construed as meaning two thirds of that body as legally constituted by the presence of a quorum, and not two thirds of the whole number of members composing the council. *Warnock* v. *City of Lafayette*, 419.

10. Where a municipal corporation ratifies the tortious acts of its agents, it will be liable therefor, although those acts were not done by the authority of the city government.

11. The general rule in regard to the allowance of damages under our law is that established by art. 2294 C. C., by which the reparation must be equal to the injury. An exception is made to this rule by art. 1928 C. C. in relation to damages resulting from offences, quasi-offences, and quasi-contracts, which declares that in such cases much discretion must be left to the judge or jury; but this discretion is not unlimited, and, in this respect, our jurisprudence differs from that of England. *McGary* v. *City of Lafayette*, 440.

COSTS.

A party will not be liable for costs where she deposits in court the amount actually due by her; but where she contends that she is liable only for a sum less than the result of the litigation shows to have been due by her, she will be bound for the costs. *Allan, Executrix*, v. *Wills et al.*, 97.

COURTS.

I. *Supreme Court.*

1. The fact that a judge of the Supreme Court was absent from the bench at the time of the argument of a case, will not disqualify him from taking a part in its decision. *Matter of N. O. Improvement & Banking Co.*, on rule, 478.

II. *District Courts.*

2. The terms of the district court of New Orleans must be considered, for the purpose of appeal under the Statute of 22d March, 1843, as monthly, although, in fact those courts sit continuously from November to July. *Cuddy et al.* v. *Belleville Iron Works Co.*, 582.

III. *Courts generally.*

3. An injunction will not lie to restrain a municipal corporation from instituting suits before a justice of the peace, against a party for infractions of an ordinance of the municipality, where an appeal will lie from the decisions of the justice to the Supreme Court. The jurisdiction of the justice cannot cannot be thus interfered with. *Devron* v. *First Municipality*, 11.

CRIMINAL LAW.

I. *Bail and Forfeited Bonds.*

1. Though there be no proof that a judgment, rendered against the principal and surety in a bond taken by one of the recorders of the city of New Orleans for the appearance of the principal to answer a charge of assault and battery, was ever notified to the parties, it cannot be set aside, under the provisions of the stat. of 11 March, 1837, after the lapse of ten days from the date of an offer made, with the assent of the principal, by the surety, in court, to surrender his principal, and of an application by the surety for the cancelling of the mortgage resulting from the recording of the judgment in the mortgage office. *State* v. *Farron et al.*, 275.

2. Where a bond entered into by a prisoner and his sureties, under the stat. 11 March, 1837, s. 1, for the appearance of the principal at a term of court, does not describe the offence committed, nor that for which the party is bound to answer, the condition being merely for his appearance at a term of court and remaining there until discharged, no judgment can be rendered against the parties to the bond. *State* v. *Wooten*, 515.

II. *Prosecution and Defence.*

3. Where, at the instance of the counsel for the accused, the judge, in his charge to the jury, states his opinion as to the credibility of a witness, and, on the return of the jury into court for further instructions, repeats what he originally stated respecting the witness, the accused cannot object to it. *The State* v. *Summers*, 27.

4. Section 3 of the statute of 6 March, 1819, punishing any person "who shall inveigle, steal, or carry away any slave, so

that the owner of such slave shall be deprived of the use and benefit of such slave," creates several offences, and a separate indictment for any one of them would be good; but they may all be charged conjunctively in one count. When a statute enumerates several offences connected with the same transaction, or the intent necessary to constitute such offences, disjunctively, they may all be alleged cumulatively in one count, and in that event must be charged with the indictment conjunctively.

5. A *nolle prosequi* may be entered upon one count of an indictment, and a judgment be claimed on the remaining counts, even after a general verdict. *The State* v. *Banton*, 31.

6. Where a prisoner, on being brought to the bar, declares that he is ready for trial, and accepts the jurors summoned to pass upon the charges preferred against him, he cannot afterwards object that a copy of the indictment was not served upon him. *State* v. *Hernandez*, 379.

7. It is no objection to the validity of an indictment that several offences of the same nature, and upon which the same or a similar judgment may be given, are charged in different counts.

8. A count for larceny may be joined, in the same indictment, with one for receiving stolen goods.

9. A *nolle prosequi* may be entered upon one count of an indictment, and a judgment claimed on the remaining count, even after a general verdict. *State* v. *Crosby et al.*, 434.

10. A count for larceny may be joined, in the same indictment, with one for receiving stolen goods.

11. Though the different counts of an information be attached together by wafers, it is not necessary that each count should be signed by the prosecuting officer.

12. The different counts of an information are sufficiently identified as one proceeding, by being attached together by wafers.

13. It is discretionary with the judge of the first instance to direct the acquittal of one of several prisoners on trial for larceny and receiving stolen goods, that he may testify on the trial of the rest, if, in his opinion, the charge against him be unsupported. *The State* v. *McLane*, 435.

14. The description, in an information for larceny, of the party injured, as *I. B. Kirkland*, though his real name be *Isaac B. Kirkland*, is sufficient.

15. Where there is but one count in an information for larceny, those parts which are defective by reason of the failure to aver the value, may be rejected as surplusage, without affecting its validity; and the conviction as to the remainder will be good, under a general verdict.

16. Although, in general, it is necessary to use the precise technical expressions of the statute, in describing an offence, a variance which does not alter the sense of a material part of the statute, will not vitiate an information. As where a statute punishes "the robbery or larceny of *bank notes*, obligations," &c., an information charges the larceny of "one note on the bank of Mobile," "one note of the bank of Alabama," "of the goods and chattels," &c.; the terms "bank notes," and "notes of a bank," being, in common parlance, synonymous.

17. It is sufficient in an information for larceny, under section 10 of the stat. of 4 May, 1805, to aver that the notes which were the subject of the larceny, were the "goods and chattels" of the person entitled to them; it is not necessary that it should be stated that they were his "property." The word "chattels," used in such a case, signifies property and ownership. *State* v. *Vanderlip*, 444.

III. *Jury and Verdict.*

18. A verdict will not be set aside, on the ground that the jury, while deliberating, conversed with a deputy sheriff who sat at the same table with them at supper, where they were kept together during the adjournment of the court, and the conversation does not relate to the trial, and could not have produced any effect on their decision. Where jurors have not been permitted to separate, their verdict will not be set aside unless the tendency of the irregularity complained of has been to influence their deliberations. The mere presence of an officer could have no influence on them.

19. A jury, kept together during the adjournment of the court, are entitled to necessary refreshments, if furnished at their own expense.

20. A prisoner is entitled to the assistance of his counsel in exercising his right of challenge. A verdict cannot be sustained where this right is refused. *The State* v. *Summers*, 26.

21. It is only in capital cases that juries are not permitted to separate after having been sworn. In cases not capital, it is discretionary with the judge, until his charge has been delivered, to permit the jury to separate. *State* v. *Crosby et al.*, 434.

IV. *Appeal.*

22. No appeal will lie from a judgment, sentencing one prosecuted under the stat. 2d of April, 1832, for selling intoxicating

liquors to a slave without the consent of his master, to forfeit any license held by him, and to be forever deprived of the right of holding such a license in future, and condemning him to pay a fine of three hundred dollars and the costs of prosecution, or to remain in jail until such fine and costs, and jail fees are paid, for a term not exceeding six months. *Per Cur:* The fine is not sufficient to give jurisdiction; the forfeiture gives no jurisdiction of itself, nor can it aid the deficiency of the fine in that respect; and the costs, being matters of course, can have no such effect. *State* v. *Monasterio*, 380.

23. The jurisdiction of the Supreme Court being limited by the constitution, in criminal cases, to questions of law alone, no appeal will lie from an order of the judge of the first instance, overruling an application for a new trial made on the ground of newly discovered evidence, where the application was refused by the judge because he did not believe the affidavit of the prisoner. *Per Curiam:* We cannot review, in criminal cases, the acts of a judge of the first instance, resting in his discretion. There is nothing in the stat. of 1846, providing for the mode of bringing criminal cases before this court, which affects the question under consideration. It depends upon the constitution alone. *State* v. *Hunt*, 438.

24. To enable an appellate court to determine whether a decision, of the judge of the first instance be within the legal discretion vested in him, all the facts material to the decision must appear from the bill of exceptions. *State* v. *Brown*, 505.

V. *Of Criminal Law generally.*

25. Decision in *State* v. *Dick*, ante p. 182, as to the liability of a slave to be punished for murder, in killing another slave, affirmed.

26. After conviction it is useless to enquire by what authority the accused was arrested.

27. The provision of section 13 of the stat. of 1 June, 1846, directing that an affidavit be made before the arrest of a slave, is intended for the protection of his owner, who cannot be required to surrender his slave until facts shall have been sworn to authorizing a prosecution. The neglect of the master to insist on this right, is not an irregularity of which the slave can complain.

28. The statute imposing on the district attorneys the duty of prosecuting slaves accused of capital crimes, does not render their presence necessary to the validity of such proceedings. All the courts of the State are empowered to appoint counsel to prosecute on behalf of the State, in the event of the absence of the district attorney. Stat. of 28 January, 1817, s. 20.

29. An objection that a second justice of the peace was not present to aid in selecting the ten owners of slaves for the trial of a slave under the stat. of 1 June, 1846, must be made before the persons selected are sworn. If they are permitted to be sworn, without objection, it will be a waiver of the irregularity.

30. Where one accused of a crime is prosecuted as a slave, and he submit to a trial without objection, the fact of his being a slave will be considered so far admitted as to exempt the State from proving the slavery.

31. The Stat. of 1 June, 1846, providing for the trial of slaves, does not require that the sentence should be signed by both justices of the peace. The signature of one is sufficient. *State* v. *Jerry*, 190.

32. The exculpatory oath authorized by sec. 17 of the stat. of 7 June, 1806, to be taken by a party prosecuted under that statute for the cruel treatment of a slave, in the absence of any witness, is not conclusive of the innocence of the accused, but must be received and weighed as other evidence, and may be rebutted. *The State* v. *Morris*, 177.

33. Where, after the evidence had been concluded in a prosecution for murder, the attorney for the State states to the judge, out of the hearing of the jury, that no case had been made out against the prisoner, but makes no offer to discontinue and the court, taking a different view of the evidence, communicates the opinion of the prosecuting attorney to the jury, the court cannot be required to charge the jury that they were bound to acquit the prisoner in consequence of a virtual abandonment of the prosecution. The jury should be charged that, they were not bound by the opinion of the prosecuting officer, but were bound to examine the case and decide according to their oaths. *Per Curiam:* Without a proposition on the part of the State, assented to by the prisoner, the issue had necessarily to be submitted to the jury; and, when thus submitted, they, and not the prosecuting officer, were the judges of the guilt or innocence of the accused.

34. The opinions of medical men, examined as witnesses in a prosecution for murder, as to the cause of the death, are not conclusive upon the jury. Their testimony must be weighed by the jury, as other evidence. *State* v. *Bailey*, 376.

35. The stat. of 8th March, 1841, providing that "in all criminal prosecutions in the Criminal Court of the First District, for

crimes and offences punishable by not more than two years hard labor, the proceedings may be by information," was not repealed by the abolition of that court, and the substitution of other district courts by the constitution of 1845; and the stat. of 30th of April, 1846, organizing the district courts in the parish of Orleans, having directed (sec. 6) that all informations shall be filed in the First District Court, and this direction being necessarily understood as relating to all such informations as were authorized by the laws then in force, of which the act of 1841 was one, that act must be considered as extended to the First District Court. *The State* v. *McLane*, 435.

CURATOR.

See SUCCESSIONS.

CURATOR AD HOC.

See ABSENTEE.

DAMAGES.

I. *Ex Contractu.*

1. Where the term of payment of the price of land is uncertain and dependent upon the will and acts of the vendor, the debtor is not in default until notice is given him of the expiration of the term; and interest *ex mora* can only be recovered from the date of such notice. *Henderson et al.* v. *Blanchard*, 23.

2. To entitle a purchaser of a boat load of coal to recover damages of his vendor for a breach of contract, where it is shown that the latter had subsequently sold and delivered the coal to a third person for immediate use, proof of tender of the price is not required; such a tender would have been a vain thing.

3. In actions for damages for breaches of contract, the market value at the time of the breach, where there is a market value, is the measure of damages; the party being entitled to recover advances made and expenses incurred by him under, or on account of, the contract, and, in certain cases, interest.

4. In an action for the breach of a contract of sale for a cargo of coal, sold for a certain price, to be delivered to the purchaser at a certain place, at the expense and risk of the vendor, but resold the next day by the vendor to a third person for the same price, which was shown to have been the market price, the latter agreeing to take the cargo at the place at which it was lying at the time of the first and second sales, the first purchaser can only recover as damages the expense of transporting the coal from the place at which it was sold to the place at which it was to have been delivered to him, and the value of the risk incurred in its transportation. *Marchesseau* v. *Chaffee*, 24.

5. Interest *ex mora* is, in all cases, the measure of damages. *Succession of Mann*, 29.

6. Where one, who had sold a tract of land in another State, with a warranty of title, by an act regularly recorded according to the laws of that State, acting under the impression that the sale did not convey the legal title, and with a view to defraud his vendee, sells the same land to a third person, who takes possession of it; but, by the *lex rei sitæ*, the original vendee could not have been evicted in an action by such third person, and his intrusion on the land, being a trespass which the original vendee might have prevented, giving him no claim against his vendor under his warranty, and there being no evidence of any damage to the first vendee by the acts of his vendor to which any definite value could be fixed, the first vendee cannot recover against his vendor either the value of the land, or damages for involving him in litigation by his fraud. *Layton et al.* v. *Chalon et ux.*, 318.

II. *Ex Delicto.*

7. In cases unattended with any of those circumstances which give rise to aggravated damages, the direct and immediate, or the natural and proximate, consequences of an act are alone to be considered, in ascertaining the responsibility for the commission of an act unauthorized by law. C. C. 1928, s. 2, 2294, 2304. *Gaulden* v. *McPhaul*, 79.

8. Where a slave found on leased premises is illegally taken by the landlord under a writ of provisional seizure, and he dies of a disease contracted during his imprisonment under the seizure, the plaintiff will be responsible for his value. C. P. 295. C. C. 2291, 2294. *Cox* v. *Myers*, 144.

9. No action can be maintained against a party for aiding a debtor in removing beyond the limits of the State slaves subject to a judicial mortgage in favor of plaintiff, where the evidence shows that the debtor possessed no other property, and that prior mortgages recorded against the debtor exceed the value of the slaves. *Per Curiam:* The plaintiff has sustained no injury, and can have no action; or if it be conceded that the plaintiff's *jus in re*, resulting from the general mortgage, is sufficient to authorize the action, the damages must be merely nominal. *Kemp, Tutrix*, v. *Nichols*, 174.

10. Where a raft of logs is accidentally stranded upon the land of another, and the proprietor of the land, though notified of the intention of the owner of the raft not to abandon it, cuts up the logs into firewood and sells them for a price exceeding, after deducting the cost of cutting them up, the value of the logs in their original condition, being a possessor in bad faith, and having thus put it out of his power to restore the thing in its enhanced condition upon being compensated for his labor, he will be responsible for the enhanced value of the timber when cut up for firewood, after deducting the cost of cutting it up. Such a possessor cannot be permitted to profit by his own wrong. C. C. 517, 518, 524, 2292. *Per Curiam:* As the plaintiff has asked for an affirmance of the judgment, which allowed him the value of the wood in the form of firewood, after deducting the cost of converting the logs into that form, it is unnecessary to decide whether a possessor in bad faith, under such circumstances, is entitled to compensation for the labor of converting the wood into a more valuable form, which is, at best, questionable. *Eastman* v. *Harris*, 193.

11. In an action for damages for the destruction of plaintiff's carriage, caused by the neglect and imprudence of the driver of an omnibus alleged to belong to defendants, the latter may, under the general issue, offer proof that the omnibus had been leased by them to a third person at the time of the accident. The liability of defendants depending, not upon the ownership of the omnibus, but on the fact that the damage was done by their servant, it is no objection to such evidence that it is inconsistent with the denial of ownership of the omnibus in their plea of general denial. *Hart* v. *N. O. & Carrollton Rail Road Co.*, 261.

12. Interest may be allowed by way of damages. *Landreaux* v. *Marsoudet*, 334.

13. In an action for damages for an illegal arrest, if no probable cause be shown for the arrest, malice on the part of the person at whose instance it was made will be presumed. *York* v. *Chilton*, 377.

DEPOSIT.

A depositary who sells the deposit commits a theft. *McGregor et al.* v. *Ball*, 289.

DECISIONS AFFIRMED.

Hewitt *v.* Waterman,	3 An. 716,	p. 16
O'Reilly v. McLeod,	2 An. 146,	21
Plique *v.* Bellomé,	2 An. 293,	28
McDonogh *v.* Derbigny,	2 An. 956,	28
Ducournau *v.* Levistones,	2 An. 245,	30
Do. Do.,	Do.,	279
Hynson *v.* Menillon,	2 An. 798,	41
State *v.* Hebert,	10 Rob. 71,	59
State *v.* Hooper,	3 An. 598,	59
Allen *v.* Wills,	4 An. 97,	121
Jure *v.* First Municipty.,	2 An. 321,	147
McDonogh *v.* Dutillet,	3 An. 360,	176
State *v.* Dick,	4 An. 182,	190
Stanton *v.* Parker,	2 Rob. 550,	236
Union Bank *v.* Jones,	4 An. 220,	236
Stanbrough *v.* McCall,	4 An. 324,	327
First Munip'ty. *v.* Devron,	4 An. 278,	335
Patton *v.* Philadelphia,	1 An, 98,	347
Richardson *v.* Leavitt,	1 An. 430,	351
Youngblood *v.* Dodd,	2 An. 187,	374
Succession of Mylne,	1 Rob. 400,	386
Knight *v.* Lauve,	3 An. 64,	388
McAlpin *v.* Lauve,	2 An. 1015,	388
Harrod *v.* Woodruff,	3 Rob. 335,	388
Suc'sion of Fitzwilliams,	3 An. 489,	389
Johnson *v.* Pilster,	4 Rob. 71,	411
Pontalba *v.* Copland,	3 An. 56,	421
State *v.* McLane,	4 An. 435,	437
State *v.* Hunt,	4 An. 438,	441
State *v.* George,	8 Rob. 535,	505
Hollon *v.* Sapp,	4 An. 519,	541
Gardere *v.* Murray,	5 M., N. S., 244,	558
Prewitt *v.* Carmichael,	2 An. 943,	562
McCarty's Succession,	3 An. 517,	579

DECISIONS OVER-RULED.

Jewell *v.* Porche,	2 An. 148,	421

DEFAULT.

See DAMAGES.

DELIVERY.

See SALE.

DOMICIL.

1. A planter who removes with his family to a village in an adjoining parish, for the purpose of having his children instructed at a school in the village, and occupies a house there, but who continues to perform the duties of a citizen of the parish in which his plantation is situated, and manifests, by continuous acts, his intention to retain his domicil there, cannot be sued in the parish to which he had removed with his family, for a merely temporary purpose. *McGehee* v. *Brown*, 186.

2. The domicil of a person is in the parish in which he has his habitual residence. C. C. 42.

3. The expression, "if a defendant reside alternately in different parishes," in art. 166 C. P. does not mean the passing of a certain portion of the day in one parish, and the residue in another, but the dwelling certain portions of the time in one parish and certain portions in another, as in the case of winter and summer residences in different parishes. *Hill et al.* v. *Spangenberg*, 353.

4. One who has acquired a domicil in the State cannot escape a constructive personal citation, and the personal jurisdiction of the court of that domicil, but by the acquisition of a domicil in some other parish of the State, or by an actual removal from the State. *Favrot* v. *Delle Piane*, 584.

DONATIONS.

I. *Donations generally.*

1. A donation *inter vivos*, with a reservation of the usufruct to the donor, being in violation of a prohibitory law (C. C. 1520), is null, and cannot be protected by the prescription of one year. *Dawson et al.* v. *Holbert, Tutrix, et al.*, 36.

2. The action of forced heirs, in which the sale from a parent to his children is attacked as containing a disguised donation, is not derived from the ancestor, but from the law. So far as their *ligitime* is concerned they are not heirs, but creditors. *Rachal et al.* v. *Rachal et al.*, 500.

3. A donation of slaves and their increase, for the sole use and benefit of the donee, during her natural life, and at her death to the heirs of her body for ever; but, in the event of her dying without issue of her body and of her husband's surviving her, the husband to enjoy during his natural life all the use and benefit arising from the labor of the slaves and their increase, and, at his death, the slaves and their increase, to revert to the heirs of the body of the donor, and to be theirs for ever, creates a substitution, and is void.

4. The facts alleged in an application for a new trial on the ground of the discovery of new and material evidence since the trial, must be supported by an affidavit. C. P. 561.

5. An intervention will not be allowed, where its reception must retard the decision of the principal action. *Colvin* v. *Nelson*, 544.

II. *Mortis Causa.*

6. Where a resident of another State, who dies here without having acquired a domicil, leaves a testament executed in the State in which he resided, the effect of such testament upon slaves and moveables in his possession in this State at the time of his death, must depend upon the jurisprudence of the State in which the testament was executed. *Succession of Wells*, 522.

DOTAL PROPERTY.

See Husband and Wife.

ERROR.

See Obligations.

EVICTION.

See Sale, Warranty in Case of Eviction.

EVIDENCE.

I. *Admissibility under the Pleadings.*

1. Where in a petition to enjoin a sale, specific objections are made to the manner of advertising it, evidence will be inadmissible to establish other irregularities. The proof should be confined to the objections specified. *Dorsey* v. *Hills*, 107.

II. *Competency of Witness.*

2. The surety in a tutor's bond, cannot be released, for the purpose of testifying in favor of the tutor in an action against the latter to compel him to account, though other and sufficient security be offered by the tutor. *Moore et al.* v. *Thibodeaux*, 74.

3. Parol evidence is inadmissible, in the absence of any allegations of fraud, to contradict or alter a written act of sale. *Wilson* v. *Phillips*, 158.

4. In an action on a note signed by A., by which he promises to pay a certain sum, he appearing on the face of the note to be the only party liable for its amount, instituted against A. and another alleged to be part owner of a steamer for the price of which the note was given, A. cannot be sworn as a witness, at the instance of the plaintiff, to establish the liability of his co-defendant as a partner with him. He is incompetent on account of interest. *Ellis et al.* v. *Lauve et al.*, 245.

5. The testimony of witnesses is admissible to prove that a person, alleged to be the mother of a child, presented the child to the priest for baptism, and declared herself to be its mother, though the certificates

of birth and baptism of the child had been previously offered in evidence, by the same party, to prove the same facts. *Jobert et al.* v. *Pilot, Executor, &c.*, 305.

6. A member of the bar of a State in which the common law prevails may be examined as a witness, to prove whether a party, under the circumstances of his case, could recover in any action in that State. *Layton et al.* v. *Chalon et ux.*, 318.

7. An agent is a competent witness against his principal, in regard to the business of his agency. *Forman et al.* v. *Walker*, 409.

8. The fact that a witness is a son-in-law of the party by whom he was offered, is an objection to his credibility, but not to his admissibility. *Rachal et al.* v. *Rachal et al.*, 500.

9. The evidence of an attorney, in whose hands a note had been placed for collection, is admissible, for the purpose of preventing a double credit for the same payment, to prove that a credit endorsed on the note was written by himself, and that it was intended to be for the proceeds of certain property of the maker, which had been sold to make a payment on account, although the matter was not within his personal knowledge. *Per Cur:* The evidence does not contradict nor vary the written credit, but merely goes to show its origin and the motive of the party doing the act. The information of the attorney was secondary, and probably derived from his client; but to reject his statement on the ground of hearsay, would be a misapplication of the rule. *Sanders* v. *Huey*, 518.

10. An agent is a competent witness for his principal; his relation to the latter being merely a matter to be considered in estimating his credibility.

11. Whether a conviction and sentence for felony in another State of the Union will, or will not render a witness incompetent in the courts of this State, it is clear that any such disability will be removed by a pardon, where the disability was not annexed to the conviction of the crime by the express words of a Statute. *Klein* v. *Dinkgrave*, 540.

12. Where a witness, incompetent on account of interest, is admitted without objection, and testifies in favor of that interest, his interest in the event of the suit can only affect his credibility. *White* v. *McDowell and Husband*, 543.

III. *Judicial Records and other official Instruments.*

13. In an action for freedom a judgment rendered in a similar suit by a brother of plaintiff, against the same defendants, establishing his freedom, on proof that his mother and grandmother were free long before the birth either of plaintiff or his brother, is not admissible in evidence. The judgment has not the force of *res judicata* as to the plaintiff, who was no party to it. The authority of the thing adjudged takes place only with respect to what was the object of the judgment, which was the freedom of the brother.

14. A judgment admitted to prove *rem ipsam*, establishes nothing more than that such a judgment was rendered. *Louis et al.* v. *Ricard et al.*, 87.

15. A judgment against the original debtor is *primâ facie* evidence of the debt, against the holder of property sued in a revocatory action to set aside a sale of the property on the ground of simulation. The holder may controvert it by all legal means, but the burthen of proof is on him. C. C. 1967, 1971. *Fox* v. *Fox et al.*, 135.

16. A judgment obtained against a natural tutrix, ascertaining the amount due by her to her minor children, is not evidence against the defendant in an action to enforce the tacit mortgage of the minors against their tutrix on property in the hands of an assignee of one, who acquired by purchase at a judicial sale of the effects of the community formerly existing between the mother and the father of the minors, made before the date of the judgment. *Gales* v. *Christy, Assignee*, 293.

17. The authority of the thing adjudged is merely an exception, which the party who wishes to avail himself of it must oppose, in the manner and at the time prescribed by law. Unless the exception be thus opposed, the party will be presumed to have renounced the advantage resulting from it.

18. A judgment, rendered in another State, against one who had previously made a *cessio bonorum* here, though binding on him personally, is not conclusive against the other creditors, nor against the fund to be distributed here. *West* v. *His Creditors*, 447.

19. In an action here on a judgment obtained in another State, the testimony of a witness on the part of the plaintiff to show that the person in whose favor the foreign judgment was rendered was the mere agent of the party in whose name the action on it was commenced in this State, cannot be excluded on the grounds that such proof could only be made contradictorily with the person in whose favor the judgment was obtained, and that the transcript of the foreign proceedings, introduced by the plaintiff, could not be contradicted by testimonial proof. The testimony does not contradict

the record, but shows a matter not apparent on it and not inconsistent with it; nor is it necessary to make the plaintiff in the foreign proceedings a party, in order to establish that the person who sues here is the real owner of the judgment.

20. In an action in this State on a judgment obtained in another State, the foreign judgment, in the absence of any evidence impeaching the judgment, must be considered conclusive of matters properly investigated in the original action, as of the right of the plaintiff to sue, &c. *Lewis* v. *Wilder*, 574.

IV. *Of Parties.*

21. Where a party interrogated on facts and articles in relation to a verbal contract to transfer real estate, denies the contract, her answer cannot be contradicted by parol evidence; nor is parol evidence admissible to prove such a contract, in an action to recover damages for a breach of it. *Marionneaux* v. *Edwards*, 103.

22. The effect of the answers of a garnishee is to throw the burthen of disproving them on the other party. *Commissioners of Exchange Bank* v. *Yorke et al.*, 138.

23. As against himself and those he represents, a man's actions and representations will be presumed to correspond with the truth. They are in all cases evidence of the fact; and where a party has induced another to act on the faith of such representations, and where he cannot show the contrary without a breach of good faith and common honesty, such representations are usually absolutely conclusive. *Yales* v. *Christy, Assignee*, 293.

24. A party to an action, to whom an interrogatory is propounded by his adversary, may state in his answer any matter pertinent to the issue, and clearly connected with the facts which his adversary is seeking to establish. The answer may be qualified by the statement of facts which would prevent the consequences of an absolute and unqualified answer. *Amonett, Executor*, v. *Fisk*, 342.

25. Where interrogatories are propounded to a plaintiff, in answer to one of which he states that defendant is indebted to him in the amount sued for in an action against him as drawer of a bill of exchange, it will be unnecessary to make any further proof of his claim until the answer is rebutted by sufficient evidence. *Conrey* v. *Harrison et al.*, 349.

26. A party to a suit is competent to prove the loss of a paper on which his claim may depend, so as to authorize the introduction of secondary evidence to establish its contents. *Pratt* v. *Wafer et al.*, 542.

27. A party will not be permitted to deny what he has solemnly acknowledged in a judicial proceeding.

28. One who opposed the seizure of slaves under a judgment, on the ground that they belonged to him, and whose title was, on the trial of the opposition, adjudged to be simulated and fraudulent, having purchased, pending the opposition, a judgment against his pretended vendor, opposed a subsequent seizure of the same slaves under the judgment under which they were first seized, claiming to be paid out of the proceeds of their sale in preference to the plaintiffs. *Held:* That he must be concluded by his previous claim to the ownership of the slaves on which he now pretends to hold a mortgage. If his claims to the ownership were true, the judicial mortgage would been extinguished by confusion. C. C. 3374. *Gridley et al.* v. *Conner*, 416.

29. A mother, co-defendant with her son, may be interrogated on facts and articles; but her answers are not evidence against the son. They can only affect the party by whom they were made. *Rachal et al.* v. *Rachal et al.*, 500.

30. Where a party to an action resides out of the parish in which the court is held, his adversary cannot compel him to bring his commercial books into court; but he may be ordered to produce, under oath, a sworn copy of a particular account. It is not necessary that interrogatories should be propounded to the party to whom the copy is required. Interrogatories may be propounded, and the party required to annex to his answers copies of the accounts; but this is not the only mode of getting at the contents of an adversary's books. *Ludeling* v. *Frellsen*, 534.

31. A statement made by a party to an action is inadmissible in evidence, though offered to be proved by the answer of a witness, introduced by the opposite party, to a question propounded on his cross-examination, where the statement has no necessary or pertinent connection with any fact sworn to by the witness, and its admission was excepted to in time. *Dickson* v. *Grissom*, 538.

V. *Of Evidence generally.*

32. Where a party to a written instrument acknowledges therein that certain machinery had been furnished by the other party, but the acknowledment does not enumerate the articles, parol evidence is admissible to prove what articles were furnished. Such evidence is merely explana-

tory of the acknowledgment; and goes neither against nor beyond it. *Larue* v. *Hampton*, 53

33. Though the defendant in an action on a lost note allege, under oath, that the note was a forgery, the testimony of witnesses will be admissible to prove a presentment of the note and her acknowledgment of its genuineness. In such a case, plaintiff will not be restricted to proof by witnesses who saw the defendant sign the act, or who know it to be her signature because they have frequently seen her write and sign her name, or by experts or comparison of writing. Article 325 C. P. is an exception to the general rule of evidence, and must not be extended beyond those ordinary cases to which it clearly applies. *Segond, Agent*, v. *Roach*, 54.

34. Though the date of an ordinary written obligation to pay money is evidence of the date of the origin of the debt, the rule does not apply to bank notes.

35. Where the note of a bank is re-issued in the course of its daily business, the obligation of the bank is fixed by the re-issuing of the note; the date on its face is of no moment. *Hepburn et al.* v. *Commissioners of Exchange Bank et al.*, 88.

36. To confirm an act not binding on a party a formal instrument is not indispensable. Its voluntary execution involves a renunciation of the exceptions which might have been opposed to it.

37. A partial execution demonstrates, as well as an entire execution, the wish to confirm a defective act. It is a tacit approval. *Cobb et al.* v. *Parham et al.*, 148.

38. A memorandum in writing, though signed on Sunday, is admissible in evidence to prove a contract made on another day. *McCalop* v. *Hereford*, 185.

39. Hearsay evidence, admitted without exception, cannot be objected to afterwards. *Eastman* v. *Harris*, 193.

40. To make an account a stated account, it is not necessary that it should be signed by the parties. It is enough if it have been examined and accepted by both, and such acceptance may be inferred from circumstances. Hence, an account rendered will be deemed to be an account stated from the presumed approbation or acquiescence of the parties, unless objected to within a reasonable time. What is reasonable time must be determined with reference to the relations of the parties, or the usual course of business of the particular class of persons concerned. *Freeman, Syndic*, v. *Howell, Administrator*, 196.

41. There can be no ratification where there is no title.

42. One who had been a probate judge cannot, after he has ceased to hold the office, authenticate a sale made by him when in office.

43. Parol evidence is inadmissible to prove a title to real estate.

44. Parol evidence, inadmissible to prove a title to real estate, cannot be received to prove the nature of the possession of a party, in order to establish that, as a possessor in good faith, he was not liable for rent, and entitled to recover the value of his improvements. Where questions of title arise in actions for damages the proof required is the same as in petitory actions. *Bradford* v. *Cook, Tutor*, 229.

45. A certificate of the auditor of public accounts that, "upon examining the tax-roll for the parish of T. for the year——, there appeared to be assessed thereon, in the name and as the property of A. H., five hundred acres of land," is inadmissible in evidence; though proof had been previously made that the original tax-roll, which was required by law to be deposited in the office of the parish judge, could not be found there. The certificate disclosing the existence of a copy of the tax-roll in the possession of the auditor, an extract from that copy, properly certified, is alone admissible.

46. The certificate of a mere matter of fact by a public officer is inadmissible. If he was bound to record the fact, a copy of the record, duly authenticated, is the proper evidence. As to matters which he was not bound to record, his certificate is merely the statement of a private person, and therefore inadmissible. *Hughey et al.* v. *Barrow*, 248.

47. Although acts under private signature do not of themselves prove the date of their execution against third persons, their date may be established by other evidence besides the actual proof of the time of their execution. Any circumstances which renders the ante-dating of the act impossible will give effect to its date. *McGill* v. *McGill*, 262.

48. A commission directed to *E. R. Clyde*, but executed and returned by *Robert J. Clyde*, as commissioner, will be admissible, where the attorney by whom the commission was taken out makes oath that he is well acquainted with *Robert J. Clyde*, that he was the person intended to be made the commissioner, that he caused the name of *E. R. Clyde* to be inserted in the commission by mistake, and that there is no other person of the name of *Clyde* in the town to which the commission was directed.

49. The designation of a commissioner to take testimony by the initials only of his first and second names, though his surname be in full, is irregular; and should be objected to by the opposite party before add-

ing his cross-interrogatories. *Frierson* v. *Irwin*, 277.

50. Witnesses cannot be examined as to matters of law, which it is the exclusive province of the court to determine. *Zeringue* v. *White*, 301.

51. Where the testimony as to a judicial sale is conflicting, it will be insufficient to destroy the legal presumption that the sheriff did his duty. *Bacchus* v. *Moreau*, 313.

52. No objection to evidence will be considered on appeal, unless specified, and reserved, in a bill of exceptions. No notice will be taken of any agreement, alleged by the counsel of one party to have been made with the other party, that the evidence was received subject to all legal exceptions. *Succession of Prevost*, 347.

53. The production of papers in the possession of the opposite party may be required, even after the trial has commenced, where the party then discovers, for the first time, that his interests require them; *aliter*, where their importance must have been known to the party before the trial. *Plympton* v. *Preston*, 360.

54. Parol evidence is admissible to show the nature and extent of premises leased by an act *sous seing privé*, when, from the indefinite language of the written instrument, it is necessary, to ascertain the intention of the parties.

55. Where the intention of the parties is doubtful, the manner in which a contract has been executed by one with the assent of the other, will determine the construction to be put upon it.

56. Antecedent conversations respecting a contract which the parties subsequently embody in a written instrument, are inadmissible, where fraud is not charged. *D'Aquin* v. *Barbour*, 441.

57. Objections to evidence, though made in the lower court, will not be noticed on appeal, unless brought before the court by a bill of exceptions. *West* v. *His Creditors*, 447.

28. Where a party relies on a verbal sale of lands, alleged to have been made while the laws of Spain were in force, it is incumbent on him to show that the sale was made at a time when such transfers were authorized by law, *Badon et al.* v. *Bahan*, 467.

59. Simulation in written acts, when alleged by third persons or forced heirs, may be proved by parol. *Rachal et al.* v. *Rachal et al.*, 500.

60. A copy of a writing not authenticated by the proper officer is inadmissible, not being the best evidence in the power of the party offering it.

61. Where the witnesses to an act of partition *sous seing privé*, containing donations to the children of the party by whom it was made, are dead, and their signatures are proved, no objection can be made to the admissibility of the act in evidence, on the ground that it was not authentic. *Rachal et al.* v. *Rachal et al.*, 500.

62. It being material, in the interest of justice, that the motives and prejudices, as well as the means of knowledge, of a witness, should be laid before a jury, great latitude is allowed in his cross-examination. But this latitude is necessarily, to a certain extent, confided to the discretion of the judge of the first instance.

63. A jury will not be authorized to infer the existence of any bias or prejudice on the part of a witness against a prisoner, from the fact that the witness, though not an officer of the peace, and without any warrant, and not summoned by any officer to aid in arresting the prisoner, had taken great pains to do so. *State* v. *Brown*, 505.

64. Parol evidence of third persons of a verbal contract to sell land, will not support an action for specific performance, nor for damages. *Anderson* v. *Smith et al.*, 525.

65. An act of sale of land situated in another State, which appears to have been acknowledged by the parties executing it before a justice of the peace in that State, and is certified by the clerk of the court in whose office the act was recorded as a true copy from the records of his office, though accompanied by a certificate of the governor of the State of the official capacity of the clerk and of the certificate's being in due form, &c., is not admissible as evidence of the original act, but is simply a private writing, and must be proved as such. *Per Curiam:* There is no evidence before us that the certified copy of the act of sale would be received in evidence in any court of the State in which it was executed, without satisfactorily accounting for the non-production of the original. *Dickson* v. *Grissom*, 538.

66. Where a commission to take testimony in another State is addressed to "any judge or justice of the peace," at the place where the evidence is to be taken, without naming any one in the commission, the party offering the commission must show directly, or by circumstances authorizing a legal inference, that the person by whom the commission was executed, was, at the date of its execution, a justice of the peace of the State into which the commission was sent. A certificate of the Governor of the State, dated subsequently to the execution of the commission, stating merely that the person by whom the commission was executed, "*is* a duly authorized justice of the peace and that full faith and credit are due to his official acts," not written on

the same paper as the depositions, and there being no internal evidence in the papers that the justice's certificate was ever seen by the Governor, is insufficient to establish that the justice was qualified to act at the date of the execution of the commission. *Barelli et al.* v. *Lytle et al.*, 557.

EXECUTION OF JUDGMENT.

1. A *fi. fa.* issued from a district court and levied on property within the jurisdiction of another district court, may be enjoined by the latter.

2. It being the duty of the police jury of each parish to provide a sufficient house for the courts and jurors, and a good and sufficient jail to receive and keep prisoners, where buildings have been thus provided by a parish for the State, and are used and occupied for public purposes, they are not liable to seizure and sale under execution against the police jury. *Police Jury of West Baton Rouge* v. *Michel et al.*, 84.

3. Working animals may be seized separately from the plantation to which they are attached, when the debtor himself points them out to the sheriff for seizure. Under such circumstances the debtor cannot afterwards object to the seizure. *Dorsey* v. *Hills*, 107.

4. A creditor who has obtained a judgment, with an acknowledgment of his rights as a mortgagee, may seize other property than that mortgaged to him. All the property of the debtor is liable for the payment of his debts. *Cobb et ux.* v. *Hynes*, 150.

5. Parol evidence of the contents of books and papers, unless objected to, must receive the same consideration as the books and papers themselves. *Jouannaeu, Curator*, v. *Shannon*, 330.

6. To make a valid seizure of a bill or note under a *fi. fa.*, the sheriff must take actual possession of it. *Gaines* v. *Merchants' Bank*, 369.

7. Simulation, as between the parties to an authentic act, cannot be proved by parol. *Gautier* v. *Briault*, 487.

EXCEPTIONS.

See Practice.

EXECUTOR.

See Successions.

EXECUTORY PROCESS.

Executory process cannot be issued on a mortgage containing mutual covenants, which was never accepted by the mortgagee, there being no authentic evidence that the latter ever bound himself to the implied covenants contained in the act. The institution of proceedings under the mortgage is not a sufficient acceptance to authorize the issuing of the executory process. The evidence on which executory process issues must be authentic. The judge, in granting the order, can take no cognizance of other evidence. *French* v. *The Mechanics' and Traders' Bank*, 152.

EXPERTS.

See Auditor.

FACTOR.

See Mandate.

FIERI FACIAS.

See Execution.

FIDEI COMMISSUM.

See Donations.

FREIGHT.

See Common Carrier.

FOREIGN LAWS.

See Law and Conflict of Laws.

FRAUD.

See Obligations and Insolvency.

GARNISHEE.

Where interrogatories propounded by a plaintiff to a garnishee do not disclose the amount of plaintiff's judgment, and it is not shown to have been otherwise notified to the garnishee, judgment cannot be rendered against him, on his failure to answer, for the amount of plaintiff's judgment.

2. Where a plaintiff by whom interrogatories had been propounded to a garnishee, after a written motion to have them taken for confessed, goes to trial upon the merits,

without requiring the action of the court upon his motion, and permits the garnishee to offer his answers in evidence, without excepting to their being received, the answers must be considered as uncontradicted, and judgment may be rendered in accordance therewith. *Copley* v. *Snow*, 521.

3. Where a garnishee is interrogated by a plaintiff as to the time when a note, which had been in the garnishee's possession, was delivered to a third person, and the fact is important to the plaintiff, inasmuch as the note, if in possession of the garnishee at the time of service of the interrogatories upon him, would be subject to plaintiff's seizure, a failure of the garnishee to state in his answers the date of the delivery will be considered as a confession that he had the note in his possession when the process was served upon him. *Vason* v. *Clarke*, 581.

HABEAS CORPUS.

A suspensive appeal will not lie from an order discharging a prisoner under a *habeas corpus*, although the imprisonment grew out of proceedings in a civil action. *Ex-parte Emanuel*, 424.

HUSBAND AND WIFE.

I. *Marriage.*

1. After the lapse of a century, a marriage, which had never been doubted or denied, must be held to have been duly solemnized.

2. A marriage, celebrated in Louisiana, before the year 1787, may be proved by reputation. *Per Cur:* Under the laws of Spain, in force at that time, proof of marriage by reputation, was sufficient, in civil suits.

3. Decision in *Patton* v. *Philadelphia*, 1 An. 98, affirmed, so far as it declares that the regulations of the Council of Trent, in regard to marriages, were never extended to the colony of Louisiana, by the king of Spain.

4. The certificate of a priest, attesting the celebration of a marriage in the Spanish colony of Louisiana, before the year 1787, though not signed by the parties nor by witnesses, is proof of a legal marriage.

5. Where the marriage of the parents has been proved, parol evidence is sufficient to establish the legitimacy of their children. *Succession of Prevost*, 347.

II. *Separation from Bed and Board, and of Property.*

1. Blows inflicted on a wife by her husband, will entitle her to a separation from bed and board. *Armant* v. *Her Husband*, 137.

2. Where in an action for a separation from bed and board, instituted by the husband, a curator *ad hoc*, was appointed to represent the wife, who was an absentee, but the case was tried without any issue joined, or judgment by default regularly taken, judgment cannot be rendered for the plaintiff. *Schnaufer* v. *Schnaufer*, 355.

3. Where the petition in an action for separation *a mensa et thoro* contains no prayer for a partition of the property of the community, and the defendant has had no notice of an application for that purpose, a separation of property cannot be decreed at the time of rendering judgment for a separation. *Edmonds* v. *Her Husband*, 489.

4. Proof that a judgment of separation of property had been obtained by a married woman against her husband, will not authorize a judgment against her personally for a debt contracted by her since the judgment of separation. *Per Cur:* A separation of property, though decreed, if not executed by payment of the rights and claims of the wife as far as the estate of the husband can pay them, made to appear by an authentic act, or by a *bona fide* uninterrupted suit to obtain payment, is null. C. C. 2402. *Longino* v. *Blackstone*, 513.

III. *Dowry and Paraphernal Property.*

5. Property given to the wife, on the express condition that it should be dotal, and which the husband received as such, cannot be regarded as community property. The wife is entitled to be paid the whole amount of her dowry, before the amount of the community property is determined. *Succesion of Mossy*, 337.

6. The Statute of 27th of March, 1835, s. 2, which authorizes married women who have attained the age of twenty-one years, to renounce, by notarial act, with the consent of their husbands, in favor of third persons, their dotal, paraphernal, and other rights, provides that the notary, before receiving the signature of any married woman, shall detail in the act, and verbally explain to her, out of the presence of her husband, the nature of her rights, and of the contract she agrees to; and where such an explanation has not been made to her, the renunciation will be of no effect. A substantial compliance with the proviso is essential to the validity of the renunciation.

7. Where a husband purchases real estate at a sale of the succession of his wife's father, giving his notes for the price, and receiving a conveyance, and, in the partition of the estate among the heirs, the husband's notes are assigned to the wife as her share, and, after the homologation of the partition, the husband receives the notes from the parish judge, and gives a receipt for them as his wife's share, and there is no proof that the notes were ever delivered or paid by him to the wife, nor that she had the separate administration of her property, the wife will be entitled to a legal mortgage on all the property of her husband for the reimbursement of the amount of the notes. And in such a case, the reception of the notes, the circumstances of that reception, and their origin being proved, the burden of proving that they were afterwards given, or paid, by the husband, to the wife, is thrown on the party opposing the mortgage.

8. Decision in *Johnson* v. *Pilster*, 4 Rob. 71, that the word "same," in article 2367 C. C. relates not to the proceeds of the paraphernal property sold, as contemplated by the preceding clause, but to the paraphernal property itself, the law intending to secure the wife, in every case, where the husband disposed of her property for his individual benefit, affirmed. *Succession of Gremillon*, 411.

9. Where in a settlement between the father and the heir of the mother of the community which formerly existed between the parents, notes, which had been given by the husband of the heir for a loan previously made to him by the father, formed a part of the effects to be divided, and were received by the wife as her portion of the effects of her mother's succession, and delivered by her to her husband, the receipt of the notes and their delivery to the husband will not create a legal mortgage, in favor of the wife, on the property of the husband, in the absence of proof that the husband was solvent at the time his notes were delivered to him as his wife's share of the succession. In such a case the burden of proof is on the party claiming the legal mortgage. If the husband was insolvent at the time he received the notes, the wife has no mortgage for their amount. C. C. 3280, 2367. *Slatter* v. *Tete*, 465.

IV. *Community*

10. Where a wife, after remaining in this State, where her husband was domiciled, removes to another, in conformity with the decree of her husband, on account of superior advantages supposed to be afforded by the latter for rearing and educating their children, and does not return, property acquired by the husband in this State during the absence of the wife will be community property. *Per Curiam:* We cannot say that, in discharging the duties of a mother at the place selected by her husband, she was rendering him no assistance. *Moore et al.* v. *Thibodeaux*, 74.

11. The husband, as head of the community, is bound to pay its debts. If he uses the separate funds of his wife for that purpose, he becomes her debtor for the amount. *Glasscock, Tutor*, v. *Green*, 146.

12. Where a husband purchased, during the existence of the matrimonial community, a settlement right on the public lands of the United States, and after its dissolution the government made to him individually a donation of land on account of the settlement of the party from whom he purchased the land, under the Spanish law then in force in this State, did not inure to the benefit of the community, but belonged exclusively to the individual to whom it was given. The rule that things given by the sovereign formed no part of the community, but belonged exclusively to the party to whom they were given, applied to all cases except where the donation was in remuneration for military services rendered to the sovereign by a husband, who had served without pay and been supported by the community. Fuero Real, b. 3. tit. 3, l. 3. But the right of the wife as to any improvements made on the property is distinct from her right to the property itself; the augmentation of value by the common labor alone makes a part of the acquets and gains. The facts that the improvements were not made by the spouses, but were purchased by them, does not affect the principle. *Hughey et al.* v. *Barrow*, 248.

V. *Of the Law of Husband and Wife, generally.*

13. In principle, no distinction can be made between a conventional transfer of property by a husband to his wife for the payment of her dotal or paraphernal rights, and one made under the form of judicial proceedings. *Per Curiam:* Where there has been an amicable suit in which the wife charges, and the husband confesses, a debt, and the judgment thus rendered is executed by the sheriff, the parties, so far as creditors are concerned, stand substantially in no better position than if they had merely clothed their contract with the form of a notarial act.

14. A husband cannot abandon in favor of his wife, a claim due to him, to the detriment of his creditors.

15. As a general rule, husband and wife are incapable of contracting with each other The only exceptions to this rule are those enumerated in article 2421 C. C. Attempted contracts between husband and wife, not included in these exceptions, are nullities.

16. Actions to annul contracts made between husband and wife, not enumerated in the exceptions contained in article 2421 C. C. are not prescribed by one year under articles 1982, 1989 C. C. the nullity in such cases resulting from the incapacity of the parties to contract. That prescription applies where the transfer takes place between parties capable of contracting. *Hayden* v. *Nutt et ux.*, 65.

17. A marriage settlement executed in another State, where the property was situated and where the parties resided at the time, if valid by its laws, cannot be effected by the subsequent removal of the parties to this State. *Young et al.* v. *Templeton et al.*, 254.

18. A promise to pay a debt due by a deceased husband, made by the wife subsequently to his death, when the marital authority had ceased, is binding on the wife. *Succession of Guidry*, 488.

19. The rights of the spouses are governed by the laws of the place in which it was their intention at the time of their marriage to establish their domicil, and which they subsequently adopted within a reasonable time.

19. A tacit mortgage attaches in favor of the wife, on the property of the husband, for the price of paraphernal property sold by the latter, from the date of the receipt of the price by the latter; but no such mortgage exists in favor of the wife's heirs for the price of paraphernal property alienated by the husband after her death. C. C. 2367, 2380. *Walker et al.* v. *Duverger, Administratrix*, 569.

HYPOTHECARY ACTION.

See Practice.

INDICTMENT.

See Criminal Law.

INJUNCTION.

1. An injunction will not lie to restrain a municipal corporation from instituting suits before a justice of the peace, against a party for infractions of an ordinance of the municipality, where an appeal will lie from the decisions of the justice to the Supreme Court. The jurisdiction of the justice cannot be thus interfered with. *Devron* v. *First Municipality*, 11.

2. A *fi. fa.* issued from a district court and levied on property within the jurisdiction of another district court, may be enjoined by the latter. *Police Jury of West Baton Rouge* v. *Michel et al.*, 84.

3. An injunction will not be dissolved where the facts show that the party will be immediately entitled to resort to the same remedy; but such facts must appear on the face of the proceedings, or from evidence legally admitted, or received without objection. *Dorsey* v. *Hills*, 107.

4. The fact that a partial payment has been made on a judgment, which has not been credited on the *fi. fa.*, will not authorize an injunction for the entire amount of the execution. *Cobb et ux.* v. *Hynes*, 150.

5. Where a petition for an injunction is presented by a party who describes himself as a trustee, it is unnecessary that his capacity as trustee should be repeated in the affidavit.

6. Where on an application to obtain an injunction, made by several persons representing distinct interests, the affidavit is made by only one of the parties, and it does not appear either from the petition or the affidavit that he acted as the agent of the others, the injunction must be dissolved as to the parties by whom no affidavit was made. *Robertson, Trustee, &c., et al.*, v. *Travis, Sheriff*, 151.

7. On the dissolution of an injunction by which the execution of a judgment was arrested, damages to the extent of twenty per cent on the amount of the judgment enjoined may be allowed without proof. *Ortez et al.* v. *Lallande et al.*, 188.

8. Where a judgment bearing interest has been enjoined, such additional interest only can be allowed, on dissolving the injunction, as will make the rate allowed equal to the highest conventional interest.

9. Section 3 of Statute of 25th March, 1831, authorizing the allowance of interest and damages on the dissolution of an injunction, applies to injunctions of orders of seizure, and sale in other cases than those enumerated in article 739 of the Code of Practice, in which the party is not required to give bond. *Dwight* v. *Richard*, 240.

10. Fees paid to counsel for prosecuting an injunction against an illegal order of seizure and sale cannot be recovered by the plaintiff against the defendant, where the injunction is maintained. *Hill* v. *Noe*, 304.

11. An affidavit by a party "that the facts set forth in the above petition, which in his opinion render an injunction necessary, are true to the best of his knowledge and belief," is insufficient to sustain an injunction, for uncertainty. It is susceptible of two constructions; one of which, that the party means to swear that such of the facts stated in the petition as, in his opinion, render an injunction necessary, are true, would render it defective. The affidavit must be clear and unequivocal, establishing all the facts which would warrant the interference of the court, and laying a clear basis for an indictment for perjury, if any of the assertions be untrue. *Rice* v. *Walsh*, 346.

12. Where the judgment enjoined bears interest at ten per cent a year, the court, on dissolving the injunction, cannot increase the interest. Whatever else it may be proper to allow, must be in the form of damages. *Gemard* v. *Hart et al.*, 503.

13. Where, in an action to enjoin a *fi. fa.*, an appeal is granted to the defendant, on motion and in general terms, it must be considered as embracing not only the plaintiff, but also the sureties in the injunction bond, who, by a fiction of law (Statute of 25th March, 1831, s. 3), are considered as plaintiffs in the injunction. *Mitchell* v. *Lay*, 514.

14. Though the petition for an injunction to stay an order of seizure and sale merely state that, remittances to a certain amount were made to the mortgagee which should have been credited upon the note to secure the payment of which the mortgage was executed, without mentioning the dates, manner, and amounts of the respective remittances, yet, if no exception be taken to the generality of the petition, and issue be joined on the plaintiff's averments, defendants cannot afterwards object to its generality. *Ludeling* v. *Frellsen*, 534.

15. The fact that an injunction bond was not signed by the surety in the presence of the clerk of the court, is immaterial, where the genuineness of his signature, and his sufficiency, are satisfactorily proved. The clerk's approval of the bond must be presumed from his having issued the injunction. *Claiborne* v. *Bauries*, 567.

INSOLVENCY.

1. A creditor of an insolvent has a right to require the production in court of the bank-book of the syndic to enable him to ascertain the state of the insolvent's affairs. *McAuley* v. *His Creditors*, 52.

2. Where the creditors of an insolvent are the parties in interest in a contest as to a privilege claimed by one of them, the claim cannot be established by an action against the syndics, they represent the mass and not individual creditors. *Posey et al.* v. *Weems, Syndic, et al.*, 195.

3. A judgment confessed by an insolvent after a *cessio bonorum* made and accepted, cannot affect the property ceded, which, from the time of the cession, was vested in the creditors; nor will such a judgment in favor of the vendor of moveables, who had sequestered them before the cession, confessed, after the cession, by the insolvent, who had released the property on a bond before his cession, be binding on the surety in the sequestration bond. *Herrick* v. *Conant*, 276.

4. Where a debtor is insolvent to the knowledge of his creditor, who receives from him, in payment of an antecedent debt, goods upon which he has no privilege as vendor, the preference is an illegal one. C. C. 1965 to 1989. *Florance* v. *Nolan et al.*, 327.

5. It is not necessary, to subject a party to the penalties imposed by the tenth section of the Statute of 28th March, 1840, abolishing imprisonment for debt, on one purchasing merchandize for cash, and disposing of the same, or removing it beyond the reach of his vendor, without having paid the price, that he should have been the principal in the transaction, where it is shown that the purchase of the articles was a fraud contrived between another person and himself, probably for their mutual benefit. The law will hold both to have been purchasers.

6. Article 107 of the Constitution relates exclusively to criminal proceedings.

7. Judicial proceedings, having for their object the incarceration of the debtor to compel the payment of his debts, or instituted against a debtor guilty of fraud, have always been held by our courts to be civil, and not criminal proceedings. Proceedings against an insolvent debtor for fraud, under the Statute of 28th March, 1840, are civil proceedings. *Martin et al.* v. *Chrystal*, 344.

8. The mere institution of an action, by the creditors of one who had made a *cessio bonorum* under the Statute of 1817, and who had since acquired other property, to compel a new surrender, does not render the insolvent incapable, from the commencement of such action, of alienating his property in favor of a *bonâ fide* purchaser. Under that statute, such newly acquired property cannot be considered as thenceforth in the custody of the law. Until a judicial investigation has been had, and a decree pronounced, the further liability of the insolvent is a matter *en pais*. Any other con-

struction would defeat the policy of the statute. *Plympton* v. *Preston et al.*, 356.

9. After a *cessio bonorum* by an insolvent, an action to annul a contract made by him in fraud of his creditors cannot be maintained by any creditor individually. It must be instituted by the representative of the creditors. *Aliter*, when there has been no cession. C. C. 190, 1965. Statutes of 25th March, 1808; 20th February, 1817. *Bank of Kentucky* v. *Conner et al.*, 365.

10. Creditors of one who had made a *cessio bonorum* here, residing in another State, where they had acted as trustees under an assignment, made to them in that State, by a third person, to secure the payment of the debt due them by the insolvent, where such assignment was valid by the *lex loci*, must account for the property included in the assignment, or show some legal cause for their failure to reduce it into possession, to entitle them to be put down as creditors on the tableau of distribution of the effects of the insolvent in this State. *West* v. *His Creditors*, 447.

11. If a creditor of one who has made a *cessio bonorum*, who had proved a claim at the time of the first distribution of the effects of the insolvent, and received a dividend out of the funds then in the hands of the syndic, is not debarred thereby from proving, on a subsequent distribution, another and a distinct claim existing at the time of the failure, it follows, as a consequence, that new grounds of opposition may be set up against a claim allowed on a previous tableau, whenever a new fund comes into the hands of the syndic for distribution. *Same case, on re-hearing*, 450.

12. Where a *cessio bonorum* has been accepted by the court and the creditors, and a syndic been appointed and qualified, all the property and rights of property of the insolvent are vested in his creditors, represented by the syndic as their trustee. Statutes 20th Feb., 1817; 29th March, 1826.

13. All the rights of an insolvent vest in his syndic, whether placed on his schedule or not.

14. The rights vested in the creditors by a *cessio bonorum* are unaffected by subsequent proceeding of the insolvent, in causing himself to be declared a bankrupt, under the act of Congress of 19th August, 1841. *Per Cur:* Nothing passes to the assignee of the bankrupt, but the residuary interest of the insolvent, after the full administration of the insolvent estate, and the entire fulfilment of the trust thereby created in favor of the creditors. *Dwight, Syndic* v. *Simon et al.*, 490.

INSURANCE.

Where sugar and molasses contained in a sugar-house, and covered by an ordinary fire policy, are destroyed by an explosion of the steam-boilers used in manufacturing sugar, the damage having been produced by the explosion, and not by fire, the insurers will not be responsible. *Per Curiam:* The chances of loss from explosion, are not the same as those from fire. *Taylor et al.* v. *Burke et al.*, 15.

INTEREST.

1. Where the verdict of the jury allows no interest, the Court in entering judgment on the verdict can allow none. *Cochrane* v. *Murphy*, 6.

2. Interest cannot be sued for distinctly from the principal. It makes no difference that the interest claimed be allowed as a measure of damages, as in case of interest at twenty per cent a year allowed to successions where the executors fails to deposit money in bank as required by law. *Succession of Mann*, 29.

3. Where a balance has been struck, and an account rendered by a factor to his principal, which is acquiesced in by the latter, interest may be charged, subsequently, on such balance, though formed in part of anterior interest. *Aliter*, where the account is not acquiesced in. *Ledoux* v. *Goza*, 160.

4. Article 1934 of the Civil Code does not apply to merchants' accounts.

5. By the general commercial law, where the custom of the place and the practice of the parties is to strike a balance of their accounts at fixed periods, and to render the account, the balance, composed of principal and interest to date, is viewed as the capital of the creditor, on which he is entitled to charge interest from that date. Acquiescence in an account so rendered, though not *per se* an agreement to it, is evidence from which it may be inferred that the party, who received it without objection, agreed to continue the same course of dealing, and to retain the balance on paying interest.

6. By the custom of this State, it is understood between planters and their factors that the latter are to render accounts annually, after the sale of each crop, and, if the balance in favor of the factor is not paid, that interest is to be charged on such balance, at the rate agreed on, though made up of capital and interest.

7. The laws regulating the rate of interest apply to commercial as well as ordinary transactions, and conventional interest can-

not be charged in any case without a written agreement to pay it. *Thompson, Executor* v. *Mylne*, 206.

INTERROGATORIES ON FACTS AND ARTICLES.

See EVIDENCE OF PARTIES.

INTERVENTION.

See PRACTICE.

JUDGMENT.

I. *Form and Effect of.*

1. Where a party is placed on the tableau of distribution of the effects of a succession as a creditor for a certain sum, and the tableau is homologated, the homologation of the tableau is a judgment in favor of the creditor, which, so far as the succession is concerned, cannot be prescribed by less than thirty years. *Preston, Executor*, v. *Christin et al.*, 102.

2. A judgment prepared and signed by the judge in vacation, in a case in which no decree could be rendered at chambers, has no effect until entered upon the records at the ensuing term (C. P. 543, 544); and an appeal may be obtained, on motion, at that term. Statute of 22d March, 1843. *Dorsey* v. *Hills*, 106.

3. A judgment will not be reversed for an error in calculating interest, not exceeding five dollars in amount, where no effort was made to correct it in the lower court by an application for a new trial. *Downes* v. *Ferry*, 109.

4. A judgment which does not contain the reasons for which it was rendered, cannot have the force of *res judicata*.

5. A preparatory decree, prescribing the manner of proceeding deemed necessary by the court, to arrive at a final decision, cannot have the force of *res judicata*. It remains under the control of the court, subject to its revision, until a final decision. *Thompson, Executor* v. *Mylne*, 206.

6. A judgment rendered by a Circuit Court of the United States in another State, cannot be treated as a foreign judgment. It is entitled to the same respect, and must have the same effect, as though rendered by a state court of that State, of competent jurisdiction. *Niblett et al.* v. *Scott*, 245.

7. Where, before the re-organization of the judiciciary under the Constitution of 1845, a defendant died pending an action in a district court the case was required to be sent to the probate court in which his succession was opened. A judgment subsequently rendered by the district court, against the executor, who had become a a party to the action, would be without effect, that court ceasing to have jurisdiction; and no action could be maintained against the heirs on a judgment so obtained. *Rogillio et al., Administrators* v. *Swift et al.*, 247.

8. Purchasers of land from a party in whose favor a judgment had been rendered based on the admission of his title by the defendant, are not bound to enquire into the truth of the admission. It is sufficient for them, in a contest with the heirs of the party by whom the admission was made, that the admission is on the records of the court, and that a judgment had been rendered on it.

9. Section 12 of article 4 of the Constitution of 1812, and section 70 of the Constitution of 1845, which require the judges of all courts, as often as it may be possible to do so, in every definitive judgment, to refer to the particular law in virtue of which such judgment may have been rendered, and in all cases to adduce the reasons on which their judgment is founded, does not apply to an order making final a judgment by default. *Hughey et al.* v. *Barrow*, 248.

II. *Of Nonsuit.*

10. The judgment rendered against a plaintiff on his non-appearance, should not be conclusive against him, but one of nonsuit only. *Dwight* v. *Richard*, 240.

JURY.

1. Where a verdict allows no interest, the court, in rendering judgment on the verdict, can allow none. If the interest be omitted through inadvertence, the error may be corrected before the verdict is closed; if the jury refuse to allow interest when due, the remedy is by an application to set aside the verdict and for a new trial.

2. Where the verdict of a jury allows no interest in a case in which it was due, and the plaintiff prays for a new trial on the general ground of the verdict being contrary to law and evidence, and on certain special grounds, but no relief is asked against the error in the omission to allow interest, the judgment will not be altered so as to subject the appellee to the costs of the appeal, where the amount of interest is but small. *Cochrane* v. *Murphy*, 6.

3. An application for a jury is too late, after the case has been fixed for trial. *Wood et al.* v. *Lyle*, 145.

4. It being material, in the interest of justice, that the motives and prejudices, as well as the means of knowledge, of a witness, should be laid before a jury, great latitude is allowed in his cross-examination. But this latitude is necessarily, to a certain extent, confided to the discretion of the judge of the first instance.

5. A jury will not be authorized to infer the existence of any bias or prejudice on the part of a witness against a prisoner, from the fact that the witness, though not an officer of the peace, and without any warrant, and not summoned by any officer to aid in arresting the prisoner, had taken great pains to do so. *State* v. *Brown*, 505.

LAND.

1. It is the duty of a court having cognizance of a suit on the subject of limits to comply with the provisions of arts. 829, 837 of the Civil Code. No judgment can be pronounced, until the report of the surveyor appointed to inspect the premises, and the plans made by him in execution of the order of survey, have been brought into court. *McDonogh* v. *DeGruys et al.*, 33.

2. The acts of Congress passed for adjusting land titles within the Territory of Orleans and District of Louisiana, expressly provide that if claimants shall neglect to give notice of their claims, in writing, to the proper officers, or to cause the written evidence of them to be recorded, all their right, so far as it is derived from the first and second sections of the stat. of 2 March, 1805, shall become void and be forever thereafter barred; nor shall any incomplete grant, warrant, order of survey, deed of conveyance or other written evidence, which shall not be so recorded, be considered, or admitted in evidence, in any court of the United States, against any grant derived from the United States. This is not a mere rule of evidence binding only on the courts of the United States. It is a rule of property.

3. An order of survey obtained prior to the 1 October, 1800, though the land was actually inhabited and cultivated, had not, under the act of Congress of 2 March, 1805, relative to titles to lands in the Territory of Orleans and District of Louisiana, amended by sec. 1 of the stat. of 3 March, 1807, the effect of a complete title conferring on the grantee absolute ownership, and exempting it from the necessity of being recorded as required by sec. 4 of the stat. of 1805. The exemption only exists in favor of complete French and Spanish grants.

4. No title passed from the French and Spanish Sovereign for lands in the Territory of Orleans and District of Louisiana by a mere order of survey; until a patent issued, all inchoate grants remained within the discretion of the grantor; and they were not changed in their character by the treaty by which Louisiana was acquired, that treaty imposing on the government of the United States only a political obligation to perfect them, which cannot be enforced by any action of the judicial tribunals. *Lobdell* v. *Clark*.

5. On the discovery of the American continent the principle was asserted or acknowledged by all European nations that discovery, followed by actual possession, gave title to the soil to the government by whose subjects, or by whose authority, it was made, not only against all other European governments, but against the natives themselves. While the different nations of Europe respected the rights of the natives as occupants, they all asserted the ultimate dominion and title to the soil to be in themselves.

6. Indian tribes in Louisiana, to whom lands were allotted by the laws of Spain, were never invested, by those laws, with the absolute ownership. The Indians were not permitted to dispose of those lands without being expressly authorized by the government. If all died, or removed permanently, the lands reverted to the crown, not by forfeiture, but by the implied right of reversion; or, if the population of the Indian villages was greatly reduced in number, the remnant, of several villages were united into one, and, in such case, they continued to hold so much of the land originally set apart for them as they stood in need of.

7. The ultimate right to the soil occupied by Indian tribes in Louisiana is in the United States, who can grant the soil while yet in the possession of the natives, such grants convey title to the grantees, subject to the Indian right of occupancy. *Breaux et al.* v. *Johns et al.*, 141.

8. Receipts of receivers of public moneys of the United States for the price of public lands, are sufficient evidence of title from the government to form the basis of a petitory action, in which the property itself may be recovered. *Per Curiam:* Lands held under such instruments enter into the domain of private property, and as such are subject to contracts, and, when there is no reservation by Congress, are liable to taxation.

9. A patent from the United States is conclusive evidence of the divestiture of the fee in the land, which remained in the United States notwithstanding the sale made by its officers and the receipt of the price; but it does not affect any right to the land which may have existed under contracts between the patentee and third persons. The

patent, to whomsoever issued, inures to the benefit of him to whom the patentee is bound to convey the legal title.

10. A patent for public lands fraudulently obtained, or illegally issued, is void. *McGill* v. *McGill*, 262.

11. Where an act of sale refers to a plan as containing a drawing of the land, and the purchaser has possessed in conformity with it, he will be estopped from claiming other boundaries on the allegation that the lines as represented on the plan are not in accordance with the original grant. *Zeringue* v. *White*, 301.

12. The right of the commissioner of the general land office of the United States to vacate illegal entries of the public lands, prior to the issuing of a patent, has been repeatedly recognized, and can no longer be questioned.

13. Where an act of Congress making a donation of public lands to a State, directs the secretary of the treasury of the United States to make the location of these lands, and a resolution of the legislature of the State authorizes the governor to ask for their location, and provides for the contingency of the authority being conferred on him to make the selection, a selection of the lands by the governor, and the acquiescence of the government of the United States in a location made in accordance therewith, will be legal. *Per Curiam:* The power of the secretary of the treasury to delegate the authority to designate the lands for location, cannot be doubted. *Bettis et al.* v. *Amonett*, 363.

14. The *dictum* in *Jewell* v. *Porche*, 2 An. 148, that whatever be the name inserted in the certificate of the board of commissioners of the United States confirming a Spanish grant, the confirmation must inure to the benefit of the real owner," was said *arguendo*, and cannot be considered as a precedent. The question was not at issue in that case.

15. Decision in *Pontalba* v. *Copland*, 3 An. 56, that the Supreme Court of this State must conform its decisions to those of the Supreme Court of the United States, on questions involving the alienation of the public domain, and the interpretation of treaties and acts of Congress, affirmed.

16. Confirmations of claims by boards of commissioners of the United States organized for the adjusting of land titles, confirmed by Congress, in favor of persons claiming by derivative titles, inure to their own use. It would defeat the whole object of the laws creating such boards, and introduce infinite public mischief, to hold that the commissioners were to act only on original claims, and, by confirming the right of the original owner, place the derivative title under him entirely open between adverse claimants.

17. No title passed from the crown for land in the Spanish province of Louisana, by the execution of an order to survey and putting the applicant in possession. The applicant became the owner of the land only after the real title, completed with all the formalities prescribed by the Spanish regulations, was delivered to him. *Purvis et al.* v. *Harmanson et al.*, 421.

18. An entry, and payment of the price, of a portion of the public lands subject to entry, does not divest the title of the United States; the title is not divested until a patent has been issued. The purchaser acquires only an equitable title, subject to the discretion of Congress; but such a title is sufficient to sustain a petitory action.

19. The payment of the price of public lands of the United States, entered without warrant of law, can in no manner affect the rights of the government. No equitable title vests in the purchaser, whose only claim is for the return of the money paid by him.

20. The Constitution of the United States vests in Congress the exclusive power to dispose of, and make all needful rules and regulations in relation to, the public lands. The State courts have no authority to interfere with the primary disposal of the soil. That power rests exclusively with the general government, which has from the begining acted upon it by legislation, through boards of commissioners, receivers, and registers, under the final supervision of the secretary of the treasury; and the decisions of that officer. made within the jurisdiction vested in him, cannot be reviewed by us.

21. The sale of a thing belonging to another is null.

22. The rightful owner of receipts, given by the receiver of public monies, for the price of public lands sold without warrant of law in the Greenburg land district in this State, must be considered as the person meant by the word "*grantee*," in sec 1 of the act of Congress of 29th August, 1842, providing for the refunding, under certain circumstances, of money paid for public lands in that district; nor will a sale, by authentic act duly recorded, of the lands, which does not transfer the receipts, or make any mention of them, nor the execution of an act under private signature, purporting to be a transfer of the lands to a person with whose money the transferrer acknowledges in the act that he purchased them, amount to such a transfer of the receipts as will entitle the vendee or the furnisher of money to claim the amount of the receipts from the treasury. *Per Curiam:* In the transfer of debts to a third person, the delivery takes

place between the transferrer and the transferree, by the giving of the title. C. C. 2612. The titles in this case are the receipts; and by "*grantee*" the act of 1842 means the owner of them. *Ferry* v. *Hennen*, 458.

23. A confirmation, by commissioners appointed to ascertain the rights of persons to lands, of a claim for a specified number of acres between certain boundaries, being a complete grant from the United States, cannot be affected by any errors committed by officers of the government, in surveying and locating the claim. *Fay* v. *Chambers*, 481.

24. Improvements made upon the public lands of the United States, where the party making them is not in a situation to avail himself of the pre-emption laws, cannot form the object of a contract. The value of improvements so made cannot be recovered from a purchaser of the land from the United States; and, if possession of the land be retained from the latter by the person who made such improvements, damages will be allowed for the detention.

25. Art. 500 of the Civil Code is not applicable to materials used, nor labor expended, in making settlements on the national domain of the United States. *Hollon* v. *Sapp*, 519.

26. Where the United States have recognized the claim of one of two persons pretending to be settlers on the public lands and have issued a patent to him, the courts of this State have no power, in the absence of any equities or evidence taking the case out of the general rule, to revise their decision. *Jones* v. *Wheelis*' 541.

LAW.

See CONFLICT OF LAWS.

I. *Of Law generally.*

1. The stat. of 16 March, 1848, ch. 191, purporting to amend the stat. of 4 May, 1847, by reference to its title only, and its provisions being necessarily inoperative without a reference to the stat. of 1847, the first section must be considered as in direct conflict with arts. 118, 119, of the Constitution, and any appointment made under it as void. *Walker* v. *Caldwell*, 297.

2. Art. 1987 C. C. is repealed by art. 647 C. P., so far as they are inconsistent with each other. *Conrey* v. *Copland*, 307.

II. *Commercial Law.*

3. The commercial law, as settled in the other States of the Union, is uniformly followed by the courts of this State, where no statutory provision prevents a resort to it. *Thompson, Ex'r*, v. *Mylne*, 206.

4. A sale of derelict or wrecked property, made under a statute, will not be valid unless there has been a substantial compliance with its requisitions.

5. Where one who had been authorized by a justice of the peace, under the provisions of the stat. of Arkansas of the 21st of February, 1838, s. 9, relative to the reshipment and sale of wrecked property, to ship such property to any market where he might deem it most likely that a good sale could be made of it, sells the property, by private sale, after its shipment, to the clerk of the steamer on which it was shipped, the sale will be without effect. *Per Cur:* No application was made for permission to sell on the spot. Had such a sale been authorized, the sale would have been required to be public, after due notice, and at auction, to the highest bidder.

6. Where wrecked property is in safety, the salvor cannot sell it. A case of necessity may exist in which the power of the salvor to sell may be recognized; but, short of such a case a salvor has no more authority to sell than a captor has. *McGregor et al.* v. *Ball*, 289.

III. *Common Law.*

7. By the laws of Mississippi, no covenant or agreement in consideration of marriage, nor any deed of marriage settlement or deed of trust, though the consideration be a valuable one and the *bonâ fides* of the parties unquestionable, is good against creditors, unless acknowledged by the parties bound thereby, or proved before a judge of the Supreme Court, or a justice of the county court, or justice of the peace, or notary public of the county in which the lands, tenements, and hereditaments, or some part thereof, are situated, and unless a certificate of such acknowledgment or proof, written upon said instrument, and signed by the officer before whom it was made, be lodged with the clerk of the county court of the proper county, to be there recorded in the same manner as other deeds of real or personal estate are required by law to be acknowledged or proved. A marriage settlement, not duly acknowledged or proved, and recorded, is not void merely as to creditors having liens on the property to be affected, but is void as to all creditors whosoever.

8. On a question arising under the laws of another State, in which the English common law, so far as adapted to our constitutions and consistent with our form of govern-

ment, and not repealed or modified by statute, is in force, and where the principles of the English equity jurisprudence also prevail, and where the courts are authorized to look to English authorities in equity for rules of decision on questions turning on the principles of equity, the courts of this State will be bound to notice any thing applicable in principle, which it finds laid down in approved works.

9. In those States in which the common law prevails, a general lien on land resulting from a judgment, constitutes, *per se*, no property or right in the land itself. It confers only a right to levy on the land, to the exclusion of other adverse interests subsequent in date to the judgment, and can only be made effectual by a levee.

10. A deed, executed in a State where the English common law prevails, conveying property to a trustee, for the benefit of creditors of the grantor, though fraudulent and void as to creditors, is sufficient to divest the legal title of the grantor, and conclusive against him. And where the property so conveyed in trust for the creditors, is subsequently conveyed by the grantor to a trustee as a marriage settlement, it can only confer on the intended wife, or on her trustee for her benefit, the right to have a conveyance made to her of the property when the prior deed shall have been satisfied or otherwise discharged. It creates in her favor a lien in equity only, of no validity against a creditor until actual notice, or the filing of a bill asserting such lien, which is constructive notice; and where a judgment creditor, who, by reason of the conveyances in trust for the creditors, has but a lien in equity upon the property conveyed, instead of a legal lien, files his bill in equity before any actual or constructive notice of the deed of marriage settlement, his right to subject the property to his debt will take precedence of that of the wife. As the judgment creditor would prevail in Mississippi over the wife, by reason of his earlier assertion of his equitable claim by a bill in equity, the husband cannot, by subsequently removing slaves, which formed a portion of the property to this State, create a right of priority in her favor. *Young* v. *Templeton*, 254.

11. Under the common law, the title of the owner of personal property cannot be lost without his free consent.

12 No authority from the real owner to sell personal property is implied, by the common law, from the naked possession of the property by a third person, without the consent of the owner, under circumstances which ought to have put a purchaser from the latter on enquiry as to the origin of his possession and his title. *McGregor et al.* v. *Ball*, 289.

13. By the common law, as with us, powers of attorney are subject to strict interpretation; and the authority is never extended beyond that which is given in terms, or which is necessary and proper for carrying the authority so given into full effect. Language, however general, when used in connection with a particular subject matter is presumed to be used in relation to that matter, and must be construed and limited accordingly. *Reynolds et al.* v. *Rowley et al.*, 936.

LEASE.

1. Where a lessee, who had bound himself not to sub-let any part of the premises for more than one year, sub-lets a part for nine months, covenanting to renew the lease on the same terms from year to year for the residue of his own term, the sub-lease is a violation of the prohibition, and will authorize the lessor to demand the recission of the lease. C. C. 2696, 2700.

2. The prohibition to sub-let is always construed strictly against the lessee. Such a prohibition is not personal to the original lessor; but, in the absence of any stipulation to the contrary, the whole contract may be assigned by the lessor to a third person. *Cordeviolle et al.* v. *Redon*, 40.

3. Slaves are not subject to provisional seizure to secure the rent of the premises on which they are found, though the tenant have no other property. The right of the lessor to a provisional seixure can be exercised only on movable effects found on the premises. C. C. 2675. *Cox* v. *Myers*, 144.

LEGACY.

See Successions.

LETTING OF LABOR OR INDUSTRY.

1. The object of the statute of 18 March, 1844, is to enable mechanics and other workmen employed by a contractor to obtain the benefit of any amount due to him by the proprietor.

2. Where one who has contracted to erect a building, after having performed part of the work, becomes unable to fulfill his contract, the proprietor, on his default, may proceed to complete the building; and, if the amount expended in its completion, and the damages to which the proprietor may be legally entitled in consequence of the default, do not equal the unpaid instalment stipulated for the work, the contractor will

have, to the extent of the residue, a claim, *ex æquo et bono*, for his unpaid work. In the absence of evidence to the contrary, it will be presumed that the proprietor has been benefitted to that extent.

3. Where a proprietor paid to one with whom he had contracted for the erection of a building an instalment before it became due under the contract, and the contractor subsequently failed, and the proprietor finished the building for a sum not exceeding the next and last instalment, and the amount of the instalment so paid in advance, after deducting from it the damages recoverable under the contract, was enough to pay the mechanics and other workmen who had notified the proprietor of their claims before the period at which the instalment so paid in advance became due, the proprietor will be responsible for the amount of their claims.

4. Mechanics, laborers, and furnishers of materials employed by one who has contracted for the erection of a building, are only entitled to the same privileges as the contractor, and where the contractor has failed to register his contract as required by law, those employed by him have no privilege. Stat. 18 March, 1844, s. 4. C. C. 2743, 2744, 2746, 3239. *Allen, Executrix*, v. *Wills et al.*, 97.

5. A creditor for money loaned to a contractor for the erection of buildings is not within the stat. of 18 March, 1844. No privilege is conferred on such a creditor by that statute.

6. The stat. of 18 March, 1844, confers on mechanics, laborers, and furnishers of materials a privilege on the amount due by the proprietor, and a privilege on the building. If the contractor has not secured himself a privilege upon the building by recording his contract, he must rank as an ordinary creditor of the proprietor, and the mechanics, &c., cannot be subrogated to a privilege which does not exist; but this does not effect their privilege on what the proprietor owes. *The First Municipality* v. *Bell et al.*, 121.

LEVEES.

1. One who sues the owner of a tract of land for compensation for work done on a levee, which proves to have been of no use whatever to the proprietor, must establish that the work was done by virtue of and in accordance with the law, and the regulations of the police jury. The word *levee* has a technical meaning fixed by the stat. of 7 February, 1829, and one claiming remuneration for constructing a levee, where there has been no adjudication to him, nor acceptance of the work by the inspector, and it is shown that the proprietor has not benefitted by it, must show that the work was a levee within the meaning of that statute. *O'Reily* v. *Oakey*, 21.

2. One who has constructed a levee on the lands of an absentee, under an adjudication made by the police jury, which has been accepted by the inspector, in case of the lands not selling for the amount of the adjudication and of there being no other property of the absentee within the parish, may recover the balance from the police jury. *Knox* v. *The Police Jury of West Baton Rouge*, 62.

3. A question as to the breadth of land which a municipal corporation has a right to require for the construction of a road and levee is, within certain limits, an administrative question, to be left to the discretion of the local authority. *Mayor, &c. of Thibodeau* v. *Maggioli*, 73.

4. Article 3411 C. C. applies to the abandonment of the possession of movables only. An abandonment of the title to land must be made in writing.

5. Where a road and levee ordered by the police jury to be constructed on a tract of land is adjudicated to the proprietor of the land for a certain sum, who complies with the terms of the adjudication, being himself, as proprietor of the land, the first party bound to pay the amount of the adjudication, his claim will be extinguished by confusion. *Hereford* v. *The Police Jury of West Baton Rouge*, 172.

LICENSES.

See TAX.

LITIGIOUS RIGHT.

See OBLIGATIONS.

MANDATE.

1. Where one of two innocent persons must suffer, he ought to do so who has placed his property in the hands of a careless agent, rather than one who acts in good faith and on his confidence in what the agent has done. *Walker* v. *Cassaway*, 19.

2. The power to represent a principal in the defence of actions, is not one of administration. Such a power can result only from the express terms of an instrument, or from an implication so clear as to be irresistible.

3. A mandate which authorizes the agent "poursuivre le recouvrement de toutes

créances, par toutes voies de droit—à ce faire, paraitre en justice tant en demandant qu'en defendant," empowers the agent where an action has been legally instituted against the principal, as by attachment, &c., to appear and accomplish the purpose of the mandate—the collection of debts due the principal, by pleading in compensation or reconvention; but it confers no such general authority to defend actions as will render service of citation on the agent sufficient. *Fuselier, Administrator*, v. *Robin*, 61.

5. When an agent makes a purchase for himself which he was bound to make for his principal, the latter may, if he choose, take the purchase, and the agent will be bound to account to him for it; but this principle cannot prevent an agent from purchasing a judgment against his principal, though to the detriment of the creditors of the latter. *Commssioners of Exchange Bank* v. *York et al.*, 138.

6. As a general rule the trust reposed in an agent is personal; but this is modified by the usages of trade, where the interest of the employer and reasonable convenience require the custody of the property to be delegated to another.

7. When the nature of the business requires the employment of a sub-agent, the agent is not ordinarily responsible for the negligence or misconduct of the latter, if reasonable diligence has been used in the choice of such sub-agent.

8. An agent cannot be made responsible to his principal for exceeding his powers, where no injurious consequences are proved to have resulted therefrom to the latter. *LeDoux et al.* v. *Goza*, 160.

9. By the custom of this State, it is understood between planters and their factors that the latter are to render accounts annually, after the sale of each crop, and, if the balance in favor of the factor is not paid, that interest is to be charged on such balance, at the rate agreed on, though made up of capital and interest. *Thompson, Executor*, v. *Mylne*, 206.

10. A third person can derive no benefit from an usurpation of power by an agent on whose acts he relies, where such usurpation was known to him. *Union Bank of Louisiana* v. *Jones*, 236.

11. A party to whom goods were shipped with directions to sell them for cash, delivered the goods to a purchaser at a cash sale; but, in compliance with a custom of the place, as to such sales, to deliver goods and call for the price three or four days after, did not require payment at the time of delivery, but called in the evening of the day of the sale, and for several successive days, without obtaining payment. The agent suffered several weeks to elapse without making any attempt to secure the price, though he must have suspected that the debtor was in failing circumstances, and might have recovered the goods or secured the price. There is no proof that such an an attempt would have been fruitless. In an action by the shipper to recover the price of the goods: *Held*, that defendant was responsible for the price, having failed to show due diligence to collect the debt. *Montgomery et al.* v. *Wood et al.*, 298.

12. Where obligations have been placed in the hands of an agent to collect, it is not sufficient for him, after some time has elapsed, to offer to return them, without showing that he exercised ordinary care and industry to obtain payment. *Livaudais* v. *Denis, Executor*, 300.

13. An agent, in possession of a bill endorsed in blank, may maintain an action on it in his own name. The fact that the bill belonged to a third person is unimportant, except to enable the defendant to oppose any equitable defence against the true owner. *Conrey* v. *Harrison et al.*, 349.

14. A general power to buy property for the principal, or to make any contracts and do any other acts whatever which he could if personally present, by the common law, as well as by our law, must be construed to apply only to buying or contracting in connection with his ordinary business, and will not authorize the making of any contracts of an extraordinary character.

15. A power of attorney executed by a single woman, so far as it confers powers beyond the administration of a plantation belonging to her, with the management of which the agent was charged, will be revoked by her subsequent marriage.

16. Advances for the principal, made to one who had acted as an agent, but subsequently to the termination of his agency, cannot be recovered from the principal, unless shown to have inured to his benefit. *Reynolds et al.* v. *Rowley et al.*, 396.

17. One who purchases a bill of exchange from an agent, duly authorized to draw upon his principal, on shipment to the latter of produce purchased for him, has nothing to do with the limitations fixed by the principal as to the price of the produce, unless proved to have been aware of them.

18. Where an agent is authorized to ship to his principal, and to draw on him, "with bill of lading attached," it is unimportant that the bill of lading be not *materially* attached or fastened to the bill of exchange. It is sufficient that the bill of exchange be drawn on the shipment, and that the bill of lading be delivered with it to the purchaser of the bill. *Forman et al.* v. *Walker*, 409.

19. Where a debtor transfers to his creditor the notes of a third person, bearing interest at ten per cent a year, for an amount exceeding his debt, to enable the creditor to pay himself, and the latter finding on a settlement with the maker of the notes that he was entitled to credits which reduced the sum due below the amount of the notes, but left a balance exceeding the amount due by the transferrer of the notes, takes new notes from such third person, payable to himself, which are admitted to be good, for the whole balance due by him, bearing interest at ten per cent a year, the debtor will be entitled to recover from his creditor, by whom the new notes were taken, the amount by which the new notes exceeded the sum due to the creditor supposing so much of the new notes to remain unpaid, with interest at ten per a year from their date; but, the principal having adopted the novation, the agent must be allowed, if he choose; to give the unpaid new notes in payment *pro tanto*. The institution of an action against his debtor to recover the balance due him with interest at ten per cent a year from the date of the new notes, will be considered as an adoption of the novation. Art. 2984 C. C., which declares that "the attorney is answerable for the interest of any sum of money he has employed for his own use, from the time he has so employed it, and for that of any sum remaining in his hands, from the day he becomes a defaulter by delaying to pay it over," making the agent responsible only for *legal* interest, must be construed in connection with other principles of the law of agency, which declare that profits made by the agent, whether in the ordinary course of the business of the principal, or by a violation of his duty as agent, should belong to the principal. C. C. 2974. [*Eustis*, C. J. and *Rost*, J., dissenting.]

20. Art. 2984 C. C. was enacted in the interest of the principal, and not to shield the unfaithful agent; and should be so construed as not to conflict with other rules adopted by the law in favor of the principal, and to secure strict good faith in the agent. [*Eustis*, C. J. and *Rost*, J., dissenting.] *Stanfield* v. *Tucker, Executor*, 413.

21. Where a municipal corporation ratifies the tortious acts of its agents, it will be liable therefor, although those acts were not done by the authority of the city government.

22. The general rule with regard to the allowance of damages under our law is that established by art. 2294 C. C., by which the reparation must be equal to the injury. An exception is made to this rule by art. 1928 C. C. in relation to damages resulting from offences, quasi-offences, and quasi-contracts, which declares that in such cases much discretion must be be left to the judge or jury; but this discretion is not unlimited, and, in this respect, our jurisprudence differs from that of England. *McGary* v. *City of Lafayette*, 440.

23. Where an agent, authorized to purchase grain for his principal, contracts with a third person to take "all the grain he could deliver within a certain time," the contract will not be binding on the principal. *Per Curiam:* The agent undertook to bind his principal for the purchase of grain, but the other party did not bind himself to sell any. Principals may make what contracts they choose; but the power to make a contract of this sort cannot be deduced from any general authority. *Hartwell* v. *Walker*, 457.

24. Where a partner charged with the settlement of the partnership employs an agent to act for the benefit and in the business of the partnership, and the latter, even by the express direction of that partner, applies the money of the partnership in his hands to the payment of the individual debts of that partner, or otherwise to his use, he violates his duty as the agent of the partnership, and will be liable to its creditors. Had he delivered the money to the liquidating partner, he would not be answerable for its subsequent appropriation by the latter to his own use. *Dwight, Syndic*, v. *Simon et al.*, 490.

25. An agent employed to make or conclude a contract has not, as a matter of course, any incidental authority to receive payments which may become due under it. *Tew* v. *Labiche et al.*, 526.

26. Where the owners of merchandize consigned to an agent for sale, in answering a letter containing an account of the sales, writes with full information of all the circumstances under which it was made, that "The sale leaves us a very serious loss, but we suppose you acted for the best; we should have preferred holding on to selling at such low figures," it amounts to a ratification and approval of the sale. *Howland et al.* v. *Fosdick et al.*, 556.

MARRIAGE.

See Husband and Wife.

MINORS.

I. *Tutors and Curators of.*

1. Where a surviving father claims to have the interests of minor children in property forming part of the community of acquets and gains adjudicated to him, and the

adjudication is recommended by a family meeting, the under-tutor alone has a right to oppose it in behalf of the minors. Relations of the minors have no right to interfere in such a case, on their behalf. In the event of a collision of interest between the father and natural tutor and the child, the duty of representing the minor is confided to the under tutor. *Succession of Hebert*, 77.

2. Where one who purchased, in his own name, slaves sold at a judicial sale, applies to the probate court, alleging that he bought them as an investment of funds of minors to whom he was under-tutor, and praying for a family-meeting to consider the propriety of adopting and confirming the purchase on behalf of the minors, and they recommend its adoption, and that the under-tutor be authorized to execute his notes for the credit part of the sale, and the deliberations are homologated and the under-tutor authorized to execute the acts, but, on the next day, he subscribes notes and consents to a mortgage in his own name, without mentioning these proceedings, the minors will not be bound thereby. *Per Curiam:* The purchase having been made by the party in his own name, there was no contract to ratify; the alleged ratification was a sale from the under-tutor to the minors; and article 1788 C. C. is inapplicable to such a case. *Hall et al., Syndics*, v. *Woods*, 85.

3. In an action for the slander of title to property judgment may be rendered ordering the defendant to institute, within a certain period, a suit to establish his pretensions to the property, and this judgment, on the failure of the defendant to comply with it, will stand to the plaintiff as a perpetual default of the defendant; but the court has no power to fix a term within which the defendant must set forth his title or institute suit, under the penalty of being forever after precluded from asserting his claims. *Packwood* v. *Dorsey*, 90.

4. One who purchases the right of action from a minor against his tutor, can acquire no greater right against the latter than his assignor had; and the tutor may make the same defence to the action, and avail himself of the same means as though the suit were brought by the pupil himself; and if the defendant has become the creditor of his pupil by any advances made to him since his majority, and previous to the purchase by the plaintiff, he will be entitled to set them up in defence to the action. *Leftwich et al.* v. *Brown*, 104.

5. It is no objection to the right of a tutrix of the minor heirs to sue for the removal of the administrator for neglect of his duties, that the plaintiff, although an order had been made for her appointment as tutrix, had not furnished the bond and security required by law. Art. 332 C. C., the object of which is to prevent the tutor from assuming the administration of the minor's estate before furnishing the required security, does not apply to an action for the removal of an administrator. Proceedings for that purpose are governed by art. 1018 C. P., which authorizes an heir, creditor, or other person concerned, to pray for the removal of an administrator. *McComas, Tutrix*, v. *Ronquillo, Administrator*, 123.

6. In an action by an under-tutor to remove a tutor, the accounts of the latter may be investigated for the purpose of proving his mal-administration; but an under-tutor has no aurhority to require a rendition of accounts by the tutor. After the dismissal of a tutor the right to call for an account belongs exclusively to the new tutor.

7. A judgment in an action instituted by an under-tutor against a tutor praying for his removal and for an account of the tutorship, may be annulled so far as it compels the tutor to account to the under-tutor, and be left in force so far as it decrees the removal of the tutor.

8. A tutor owes his wards in all cases the funds which he receives belonging to them, with legal interest, and he can only shield simself from that responsibility by investing those funds, in their name, under a judgment of the court, rendered on the advice of a family meeting.

9. Where a tutor permits notes belonging to the estate of the minor to be barred by prescription, without showing any attempt to collect them, or offering evidence to prove that they could not be collected, he will be liable to the minor for their amount. *Monget, Tutor*, v. *Walker et al.*, 214.

10. A tutrix cannot, without being specially authorized, execute a note in the name of her pupil, which will be binding on the latter. *White* v. *McDowell and Husband*, 543.

11. Where one who is under-tutor to a minor, borrows funds belonging to him, his responsibility, so far as he holds funds belonging to the minor, cannot be distinguished from that of the tutor; nor can the nature of that responsibility be changed by the form in which he may choose to pay the debt. *Bird* v. *Pate, Administrator*, 225.

12. Where a tutor sells a lot of ground belonging to him individually, on which a legal mortgage existed in favor of his pupil, taking a note payable to hinself individually for the price, and, without any legal transfer of the note to his pupil, sues on it as tutor, and recovers a judgment as such with a special mortgage on the property, and receives from a purchaser of the property at

a sale subsequently made by the sheriff, the amount of a note given for the price, the tacit mortgage in favor of the minor will be thereby annulled; and the purchaser, holding under a judgment and judicial sale clothed with all the forms and solemnities of law, will not be allowed to be prejudiced by the misrepresentations of the tutor. *Per Curiam:* Third persons acquiring rights in good faith, under such a judgment, have nothing to look to beyond the judgment and the proceedings under it. If the minor be injured by the misrepresentations of the tutor, the remedy is against him, and the surety on his bond. *Pike et al* v. *Monget, Tutor*, 227.

13. The receipt by the tutor of a portion of the price of land belonging to minors, can never be construed into a ratification of a sale, to their prejudice. *Bradford* v. *Cook, Tutor*, 229.

14. A tutor, appointed under the provisions of section 4 of the stat. of 10 March, 1834, on the express condition of his being exempted from giving security, cannot be subsequently required to give security, though the property of the minor, which, at the time of his appointment, consisted chiefly of real estate, has been since converted into money and negotiable paper, for the purpose of affecting a partition. *Succession of Destrehan*, 367.

15. Where, after a judgment rendered on the opposition of the tutor, rejecting the application of a minor, under the stat. of 23 January, 1829, to be emancipated before attaining the age of twenty one years, the minor marries without the knowledge or consent of his tutor in another State, the marriage will not have the effect of emancipating him, nor will it authorize him to demand an account and settlement of the tutorship. Art. 367 C. C. which provides that the minor is emancipated of right by marriage, relates to marriages authorized by law, not to those contracted in fraud of its provisions. *Maillefer* v. *Sailot*, 375.

16. An action against a tutor for neglecting to collect a debt due to the minor, is prescribed by four years, from the majority of the latter. C. C. 356. *Fontenot* v. *Fontenot*, 488.

17. The natural tutrix of a minor child may emigrate to another State of the Union, and take her infant child with her.

19. Although a natural tutrix who marries, without being authorized by the judge on the advice of a family meeting to retain the tutorship, will lose it, yet she may be subsequently appointed, as any other person, dative tutrix; and where the tutorship was forfeited by the marriage of the tutrix in another State, to which she had emigrated, she may be there appointed guardian of the minor and will stand in the position of any guardian of a minor appointed in the State to which she had removed; and under the stat. of 1 April, 1843, she may, on proof of her appointment, without qualifying as tutrix here under our laws, compel one who had been subsequently appointed tutor to the minor by a court of this State, to account; and, where it is shown that the debts of the succession through which the property descended to the minor have been paid, she may receive the funds in his hands, and take possession of the immovables.

18. Lands of a minor, situated in this State, cannot be sold though at the instance of a foreign tutor, without the advice of a family meeting. Such a tutor has full power to administer by an attorney in fact, the real property of his pupil situated in this State; but the rules regulating the alienation of the real property of minors are uniform, and independent of the tutor's domicil.

20. Sec. 2 of the stat. of 1 April, 1843, allowing any tutor or guardian, appointed in another State of the Union, to remove the property of his pupil from this State, applies to cases in which the estate of the minor has been converted into money; but does not authorize the sale of real property belonging to the minor situated here, without the advice of a family meeting. *Bailey* v. *Morrison et al.*, 523.

II. *Of Minors generally.*

21. A minor will not be bound by a purchase, though ratified by a family meeting whose deliberations have been homologated by the court, where the purchase exceeds his available means, and instead of being an investment is a speculation which may involve him in debt and difficulty. *Hall et al., Syndics* v. *Woods*, 85.

22. Minors will not be bound by a promissory note signed by their tutor in his official capacity, in the absence of proof of judicial authority to make the note, or that its consideration inured to their benefit. *Succession of Johnson*, 253.

23. A surviving parent, who is the tutor of his child, is not bound to give security for the adminstration of his estate, the tacit mortgage on the property of the tutor affording, in the eye of the law, a sufficient guaranty for the protection of the interests of the minor. The creditors of the succession, and the heirs of age, being the only persons who could require security from the mother, it results that the security given was exclusively for their benefit. *Labranche* v. *Trepagnier et al.*, 558.

MORTGAGE.

1. The only effect of a deed of trust or common law mortgage in the countries where they are used, is to establish a lien upon property. A deed of trust has none of the essential requisites of a sale; it conveys no property, is not made in consideration of a price, or of a merely nominal price only, is not necessarily accompanied by a change of possession, and is intended only as a security for the payment of a debt. Under our laws it cannot be held to confer any higher right than that of a mortgage.

2. Where slaves conveyed to a trustee by a deed of trust executed in another State, are subsequently brought into this State, the deed must be recorded here to give it effect as a mortgage against third persons; and where, in such a case, the deed has not been recorded here, and the grantor sells the slaves to a third person ignorant of the deed, the lien will be lost; nor can it be revived against the property in the hands of a vendee of such third person, though he purchased with knowledge of the deed. *Tillman, Trustee, &c.*, v. *Drake*, 16.

3. An act executed in another State in favor of a vendor by one who had purchased a tract of land in this State, which recites that "for the consideration of one dollar, and the further consideration of securing to the vendor the payment of certain notes" executed for the price, he sells and conveys the property to his vendor, the act stipulating that if he should pay the said notes, "then these presents and the estate hereby granted shall become utterly void," &c., duly recorded in the mortgage office of the parish in which the land is situated, will have the effect of a mortgage in this State. C. C. 3257. Nor will the benefit of the mortgage be restricted to the mortgagee; the transferrees of the debts intended to be secured are entitled to the benefit of the accessory obligation. C. C. 2615.

4. A mortgage duly registered in the mortgage office of the parish in which the land lies, will not be effected by the subsequent division of the parish, and the establishment of a separate parish embracing the land mortgaged. *Hayden* v. *Nutt et ux.*, 65.

5. No action can be maintained against a party for aiding a debtor in removing beyond the limits of the State slaves subject to a judicial mortgage in favor of plaintiff, where the evidence shows that the debtor possessed no other property, and that prior mortgages recorded against the debtor exceed the value of the slaves. *Per Curiam:* The plaintiff has sustained no injury, and can have no action; or if it be conceded that the plaintiff's *jus in re*, resulting from the general mortgage, is sufficient to authorize the action, the damages must be merely nominal. *Kemp, Tutrix* v. *Nichols*, 174.

6. Article 3298 of the Civil Code, which provides that a mortgage exists, without being recorded, in favor of minors on the property of their tutor, is an exception to the rule laid down in article 3314, that mortgages shall only be allowed to prejudice third persons when they have been properly recorded.

7. *Bona fide* purchasers, without notice, who have paid the price, are not affected by secret equities existing between those under whom they held and third persons, nor by their misrepresentations and frauds. *Pike et al.* v. *Monget, Tutor*, 227.

8. Where an act of mortgage does not contain the pact *de non alienando*, and the property is in possession of a third person, no judgment can be rendered for its seizure and sale in an action against the mortgagor alone. *Brown* v. *Routh*, 270.

9. The *paraph* is not essential to the existence of the mortgage; the identity of the note may be established by evidence *aliunde*. The correspondence of date, amount, parties, rate of interest, and maturity, coupled with the possession of the note, raises a presumption of identity, throwing upon the defendant the burden of showing the existence of another note of like description made by himself, the mortgagor referred to in the act of assignment. *Jones* v. *Elliott*, 303.

10. The reservation of mortgages in favor of the Citizens' Bank by the twenty-fourth section of its charter, applies only to the case of a sale, made without the consent of the Bank, and for a sum insufficient to satisfy their claim. *Alling* v. *Citizens' Bank et al.*, 308.

11. Where the vendor of a tract of land having one arpent and three-quarters front, received five-sevenths of the price in cash, and, for the balance, took a note of the purchaser, identified with the act of sale by the paraph of the notary, the act reciting that, "pour assurer le paiement du dit billet à son échéance, ainsi que de tous frais et intérêts, hypothèque spéciale est réservé seulement sur tois quarts d'arpent du côté d'en haut de la dite propriété, l'acquéreur s'obligeant de ne les point aliéner, ou hypothéquer, au préjudice des présentes," the vendor's privilege not being necessarily inconsistent with this clause, will be considered as retained upon the whole tract; nor can the enforcement of the mortgage, by an order of seizure and sale, operate as an implied renunciation of the privilege.

12. The renunciation of the vendor's privilege must be express; or result by cogent implication. A mere doubt will not suffice

to deprive a party of what the law presumes in his favor.

13. A mortgage and privilege may co-exist on the same thing. They are distinct rights, not exclusive of each other. *Bacchus* v. *Moreau*, 313.

14. Where a mortgage contains the pact *de non alienando*, one, who subsequently purchases the property from the mortgagor, cannot claim to be in any better condition than his vendor, nor can he plead any exception which the latter could not. Any alienation in violation of the pact *de non alienando* is null, as to the creditor. And where the mortgage contains the pact *de non alienando*, a purchaser from the mortgagor, subsequent to the mortgage, will be considered as standing in the place of the mortgagor, and as subject to the same liabilities. *Stanbrough* v. *McCall, on re-hearing*, 324.

15. Where a mortgage is not re-inscribed on the books of the register of mortgages within ten years from the date of the first inscription, the inscription will cease to have effect. *Player* v. *Tarkington, Sheriff, et al.*, 396.

16. Where a debtor, who had executed a mortgage to secure a debt, subsequently executes a mortgage on other property as a further security for the same debt, the last act reciting that the debt for which the original mortgage was given was still due, that the debtor was unable to pay, and that an extension of time had been granted, but without describing the character or site of the property included in the first mortgage, the inscription of the last mortgage will not be equivalent to a re-inscription of the first, which, if not re-inscribed within ten years from the date of the first inscription, will lose its rank. *Per Curiam:* The Code requires the inscription to be renewed in the manner in which it was first made. *Succession of Gremillon*, 411.

18. The proviso in the Statute of 27th March, 1843, amending article 3333 C. C., which declares that that act shall not apply to certain mortgages in favor of the property banks, is not restricted to stock mortgages executed in favor of those banks, nor to those made directly to them, but extends to mortgages which have been acquired by subrogation; and where the subrogation was by authentic act, and recorded where similar contracts are required to be recorded, third persons will be affected by notice without any inscription in the books of the recorder of mortgages. [*On this point, the court being equally divided, the judgment below was affirmed.*]

19. The Statute of 27 March, 1843, was intended to enlarge the effect of the Statute of 11 March, 1842, amending art. 3333 C. C. It does not follow because these Statutes are exceptional, that they should be construed strictly. The construction should be such as will advance the object of the legislature. [*On this point, the court being equally divided, the judgment was affirmed.*]

20. By the Statute of 15th March, 1830, section 11, the legal mortgage on real estate in favor of the State for taxes imposed on it, is limited to two years from the time when such tax became due. *Matter of the New Orleans Improvement and Banking Company*, 471.

21. Where the notes secured by a mortgage have all matured before the sale under an order of seizure and sale, and are of like nature and dignity, they must be paid proportionally out of the fund. *Jacobs* v. *Calderwood*, 509.

22. Where a purchaser executes a mortgage on the property purchased, in favor of his vendor, to secure the payment of a bill drawn by them on a third person, in favor of their vendor, for the price, the act reciting that a special mortgage is retained on the property in favor of the vendor or any other holder of the bill, but not stipulating that the acceptor of the bill, should have the benefit of the mortgage, on paying the draft without having been put in funds by the drawers, and without being bound as to them to pay it, if the bill be paid by the acceptor at maturity without any subrogation from the creditors at the time of payment, the debt will be extinguished as to third persons and the mortgage cease to operate adversely to other mortgage creditors. *Per Cur:* The debt, as recited in the act of mortgage, was the debt of the acceptor; the draft makes him the principal debtor; and, on paying it, he paid his own debt, which the mortgage was given to secure. The creditor was paid; and as no other object was disclosed in the act of mortgage, and as there is no reservation or qualification contained in it, the mortgage cannot be kept alive for any other ulterior object, or for the benefit of any other person, unless it result from the tenor of the draft itself. *Salaun* v. *Relf, et al.*, 575.

NEW ORLEANS.

1. A report made by commissioners appointed, on an application to open a street, under the provisions of the Statute of 3d April, 1832, was re-committed with directions to make a new report within a certain delay, but no report was made within the time. Subsequently, after a rule had been taken by a party interested to show cause why

the proceedings should not be dismissed, but before its trial, an amended report was filed, which, on a compromise between the plaintiff in the rule and the petitioners for opening the street, was confirmed and homologated. There was no evidence that the appellant, who was a party, had appeared, or had any knowledge of the proceedings after the re-commitment of the report. *Held*, that no order of extension having been made when the period within which the report was to be returned was about to expire, the appellant cannot be bound by the *ex parte* homologation.

2. The Statute of 3d April, 1832, authorizing a municipal corporation to take the property of a citizen for public use, to be paid for by others supposed to be benefitted thereby, being in derogation of the rights of property, must be strictly construed. *Matter of Exchange Alley*, 4.

3. Under the Statute of 3d April, 1832, regulating the opening and improving of streets and public places in the city of New Orleans and its suburbs, the court before which the proceedings have been instituted can, in no case, amend an assessment made by the commissioners. The report must be approved, or rejected, *in toto*; and in the latter case, the court is bound either to appoint new commissioners, or to refer the whole matter back to the same. *Matter of Claiborne-street*, 7.

3. The power to relieve the indigent sick, and to provide for the poor who are unable to labor, is conferred on the municipal authorities of New Orleans, by Statutes of 14th March, 1816, s. 1, and 17th February, 1821, s. 2. *Vionet* v. *The First Municipality*, 42.

5. The ordinance of the Council of the First Municipality, of 16th February, 1846, imposing a fine on persons selling groceries in certain market-houses of that municipality, is neither illegal nor unconstitutional. *First Municipality* v. *Devron*, 278.

6. The ordinance of the General Council of the First Municipality of New Orleans, of 28th November, 1843, imposing a tax on all retailers of soda water, with the exception of apothecaries, is not illegal nor unconstitutional; nor will the fact that the party had paid for a license as a confectioner, exempt him from liability for the tax. *First Municipality* v. *Manuel*, 328.

7. It is no objection to the validity of an ordinance of one of the Municipalities of New Orleans, containing a prohibition and attaching a penality to its violation, that it purports by its terms to be a resolution.

8. The right to establish markets is a branch of the sovereign power, and that of regulating them is necessarily a power of municipal police.

9. The rigid rules by which the validity of penal Statutes is to be tested, are inapplicable to the by-laws of a municipal corporation.

10. The fines which a municipal corporation is authorized to recover for the violation of its ordinances is a penalty in the nature of liquidated damages, and established, as such, in lieu of the damages which a court would be authorized to assess in place thereof.

11. A by-law, or ordinance of a municipal corporation must be consonant with the law of the land; but it must receive a reasonable construction, and its terms must not be strictly scrutinized for the purpose of making it void. *First Municipality* v. *Cutting*, 335.

12. Section 10 of the ordinance of the General Council of New Orleans, approved by the mayor, on the 16th December, 1846, establishing an uniform rate of taxes, on hawkers, merchants, &c., does not authorize the imposition on each partner in a banking-house, or firm, making the purchase and sale of bills of exchange its principal business, of the whole amount of the tax, without regard to his residence in the State. The tax is imposed on the business, and not upon the individual members of the firm, unless they are permanent residents, or sojourners within the State. The authority of the General Council to enact that ordinance depends exclusively on the Statute of 12th January, 1842: and the power of the State itself to lay taxes only extends to persons and property within its jurisdiction. *Second Municipality* v. *Corning et al.*, 407.

13. The proviso of section 7 of the Statute of 20th March, 1840, amending the charter of the city of New Orleans, limiting the privilege conferred by that section to two years, applies only to claims for paving, and not to amounts due for taxes. *Matter of New Orleans Improvement and Banking Company*, 471.

14. Section 2 of the Statute of 10th March, 1845, conferring a privilege on the several parishes of the State for taxes imposed on property in their respective limits, extends to taxes imposed by the General Council of New Orleans. *Same case, application for a re-hearing*, 477.

NEW TRIAL.

See PRACTICE.

NON-SUIT.

See JUDGMENT.

NOTARY.

Article 3347 C. C. which directs that "every notary before whom an act shall have been made, by which notes to order have been given for the payment of a debt bearing a privilege or mortgage, shall attest each of the notes by putting his name on them, mentioning the date of the act from which the privilege or mortgage is derived, under the penalty of damages." is merely directory to the notary. *Jones* v. *Elliott*, 303.

NOVATION.

1. Novation can only be established by an express declaration to that effect, or by acts tantamount to such a declaration. The attending circumstances must be weighed with exactness, to ascertain whether the parties have really intended to make a novation and release the original debtor. *Short* v. *City of New Orleans et al.*, 281.

2. Where a creditor writes at the foot of an account, "Received payment by note," it is a novation of the debt. *White* v. *McDowell and Husband*. 543.

3. The delegation by which a debtor gives to his creditor another debtor, who obliges himself towards such creditor, does not operate a novation, unless the creditor has expressly declared his intention to discharge the debtor by whom the delegation was made. The acceptance by the creditor of such a *stipulation pour autrui* will not authorize the inferrence that he intended to discharge the original debtor. C. C. 2188. *Jacobs* v. *Calderwood*, 509.

OBLIGATIONS.

1. A transaction entered into on documents which are subsequently discovered to be false, is null, *in toto*. In such a case it is immaterial to enquire to what extent these false documents may have been the moving or determining cause of the transaction. C. C. 3048. *The Citizens' Bank* v. *Dennistoun et al.*, 44.

2. Improvements made upon the public lands of the United States, where the party making them is not in a situation to avail himself of the preëmption laws, cannot form the object of a contract. Articles 1885, 1886, of the Civil Code, limit the rule contained in article 1960, that no one ought to be permitted to enrich himself at the expense of another, to cases in which the alleged benefit arises from a lawful act. From unlawful acts, though they may have proved beneficial to others, no right not expressly authorized by law can arise. *Wood et al.* v. *Lyle*, 145.

3. A memorandum in writing, containing the terms of a transaction, drawn up in the presence of all the parties interested, and signed by two of them who incurred the heaviest obligation under it, and delivered to a mutual friend of the parties for the purpose of being recorded, will be binding without any formal acceptance by parties who, though they did not sign it, afterwards sued to enforce it. *Connolly et al.* v. *Autenrieth et al.*, 162.

4. A transaction signed by a married woman without the authorization of her husband, if subsequently ratified by her, with the assent of her husband, will be obligatory. *Same case, on re-hearing*, 163.

5. Where one, who had contracted to furnish marble for a building within a time fixed, finds it impossible, in consequence of the inundation of his quarries and marble works, to comply with his contract within the time specified, is permitted by the other party to furnish the materials afterwards, the latter must pay for them.

6. Where one, who had been unable to comply with a contract to furnish materials at a certain time, and who is permitted to furnish them afterwards, claims in his petition the original contract price, but, in a supplemental petition, demands a larger sum on a *quantum meruit*, the amount claimed in the petition will be considered as fixing the price for which the contract was to be performed after the period originally fixed for its performance. *Lagrave et al.* v. *Fowler*, 243.

7. Where, by the terms of his contract, a debtor is allowed a certain number of years within which to pay the capital of his debt, on condition of paying the interest punctually at fixed periods, it being expressly stipulated that, in case of failure to pay the interest at any one of those periods, the whole of the debt shall become due and exigible; and the debtor, under the pretext of certain sequestrations and attachments levied on the debt in his hands by creditors of the party to whom the debt was due, in which proceedings he had acted either as the counsel or legal surety of the creditors, and thus assisted in creating their interference with the rights of his creditor, refuses to pay the interest falling due at one of the periods fixed by the contract, and is regularly put in default, the whole debt may be exacted from him. *Plympton* v. *Preston*, 360.

OFFENCES AND QUASI OFFENCES.

See Damages, Ex Delicto.

OFFICE.

The word *office*, in articles 1987 C. C. and 647 C. P., means a *public* office. The commisssioners appointed under the Statute of 14th March, 1842, providing for the liquidation of banks, are not public officers. *Conrey* v. *Copland*, 307.

OPPOSITION OF THIRD PERSONS.

See PRACTICE.

PARAPHERNAL PROPERTY.

See HUSBAND and WIFE.

PARENT AND CHILD.

1. The testimony of witnesses is admissible to prove that a person, alleged to be the mother of a child, presented the child to the priest for baptism and declared herself to be its mother, though the certificates of birth and baptism of the child had been previously offered in evidence, by the same party, to prove the same facts.

2. The acknowledgment of an illegitimate child, which the law requires to be made before a notary, in the presence of two witnesses, when not made in the registry of birth or baptism, is that of the father. Illegitimate children may prove their natural maternal descent, and the acknowledgment of their mother, by any legal evidence. C. C. 221, 230.

3. In an action by the father and sister of a testatrix against her executor, to annul a testament by which an acknowledged natural child was made her universal legatee, letters of the testatrix are inadmissible, where the father had remained unknown, to show that the instituted heir was an adulterous bastard child. Natural paternal descent could not be proved against the heir in such an action. *Per Curiam:* We do not mean to say that the acknowledgment of the mother is an absolute title against her legitimate heirs; but, as she was free, they can only oppose to it that it is false, or made in fraud of their rights.

4. The heirs of the father and mother will not be allowed to prove that a child, acknowledged by a father who was free, was an adulterous bastard on the side of its mother, who had remained unknown. This is equally true, where the mother has acknowledged the illegitimate child, and the father is unknown. *Jobert et al.* v. *Pitot Executor, &c.*, 305.

PARTITION.

1. The pendency of an action in which one of the joint proprietors of a lot of ground claims from his co-proprietor a sum for improvements, with a privilege upon the lot, cannot prevent the latter from obtaining a partition of the property until the claim is settled. *Per Curiam:* Such a claim is to be taken into account in making the partition, but cannot prevent it. C. C. 1272.

2. It is no objection to a judicial partition that the experts selected to form the lots under article 1289 of the Code, had acted as appraisers when the property was inventoried.

3. A notary is not bound, under article 1290 of the Civil Code, when contestations arise in the course of a partition, to prepare, in all cases, a *procès-verbal* of the objections and declarations of the parties, and to suspend his proceedings and refer the parties to the judge having cognizance of the partion for his decision thereon. He must exercise a sound discretion in ascertaining when they are serious, and, when satisfied that they are not, should disregard them.

4. Where a partition, made by a notary, provides that a party who had drawn one of the lots into which the property was divided, should pay a certain sum to his co-proprietor on account of the greater value of the lot drawn by the former, judgment should be rendered in favor of the latter for the amount, at the time of homologating the report. The party should not be compelled to institute a separate action for the amount. *Jones et al.* v. *Crocker*, 8.

5. A partition cannot be decreed where one of the co-proprietors has not been represented in the action. *Willey* v. *Carter*, 56.

6. In a partition of land ordered to be made in kind the notary cannot dispense with the drawing of lots, without an express agreement in writing made by the parties and notified to him. *Moore* v. *McKiernan*, 226.

7. In an action for a partition of land all the parties in interest must be joined; and it devolves on the plaintiff, on an issue made by one of the defendants, to show that the proper parties are before the court. C. C. 1252. C. P. 1024. *Rightor et al.* v. *De Lizardi et al.*, 260.

PARTNERSHIP.

1. An act of sale of real estate acquired by a partnership, must be executed by all of the partners. If signed by two only, it will convey only their interest. *Willey* v. *Carter*, 56.

2. Although in ordinary partnerships each partner is entitled to interest on all sums advanced by him, he cannot claim conventional interest on those sums without an agreement in writing by the other partners to pay it. The circumstance that conventional interest was charged in the books kept by the party who claims it, and in the accounts rendered by him to the plaintiff from time to time, cannot, in partnerships of this kind, be considered proof of such an agreement. *Mourain* v. *Delamre*, 78.

3. In an action on an obligation in favor of a partnership, all the partners must join to enforce its performance. If one of the partners be absent, he may be represented by a curator *ad hoc*. *Halliman et al.* v. *Clark et al.*. 179.

4. The mere joint ownership of real estate confers no authority upon either of the joint owners to bind the other by a note.

5. The joint ownership of real estate does not create a partnership as to such real estate. A special contract in writing is necessary for that purpose. C. C. 2807.

6. To enable one of the members of a partnership formed for the cultivation of land held by them as joint owners, to bind the other by a note made in the partnership name, an express authorization, or one clearly to be implied from the course of business of the firm, is necessary. In the absence of such express or implied authority it is incumbent on the payee to prove that the amount of the note inured to the benefit of the partnership.

7. Where one of the members of a partnership formed for the cultivation of land held by them as joint owners, the partnership not being shown to have been such as would convert the land into partnership property, and there being no express authority to either of the partners to bind the other by a note in the partnership name, and none implied from the course of the partnership business, executes a note in the partnership name, with a third person as surety, and discounts it, and applies the proceeds to the payment of a note given for the price of the land by which the joint purchasers bound themselves individually and *in solido*, and the note is paid by the surety, the latter can have no recourse against the partner who did not sign the note. The partner by whom the note was made was bound individually to the party by whom the note was discounted; the application of the proceeds made the party who signed the note a creditor of his co-partner for half the amount so paid, but did not sign it; and when the surety paid the note he became subrogated only to the rights of the party by whom it was discounted. *Benton* v. *Roberts et al.*, 216.

8. A confession of judgment, in an action on a partnership debt, made, after the dissolution of the partnership, by one of the members, is binding only on himself. *Herrick* v. *Conant*, 276.

9. One partner cannot sue his co-partner, to recover the share of the latter in the loss in a particular transaction. He must sue for a settlement of the partnership. *Connolly et al.* v. *Adams*, 354.

10. Where there has been a settlement of partnership affairs to a certain date, and one partner executes his note in favor of the other for an amount due to the latter, he cannot require a final settlement of the partnership before paying the note thus given. *Copley* v. *Richardson*, 512.

11. Where a partnership has been dissolved by the death of one of its members, a surviving partner cannot, by acknowledging a claim against the partnership, which had been extinguished by prescription before its dissolution, revive the debt as against the partnership. Such an acknowledgment can only affect the person by whom it was made. *Walsh* v. *Cane, Administratrix*, 533.

PATENT.

See LAND.

PAYMENT.

Where slaves and other property were conveyed, in another State, by a deed of trust for the benefit of a creditor, and a part only of the property conveyed is accounted for, and the creditor is proved to have in his possesion some of the slaves so conveyed, besides having received various sums under the same title, no portion of his claim can be allowed. *Succession of Montgomery*, 420.

PEDLERS AND HAWKERS.

See TAX.

PETITIORY ACTION.

See PRACTICE.

PLEADING.

See PRACTICE.

POLICE JURY.

1. The powers vested in police juries and other political corporations must be exercised by ordinances general in their operation.

2. Though the Statute of 28th March, 1840, creating a police jury for that part of the parish of Orleans on the right bank of the river, should be considered as vesting the police jury with power to regulate the proportions, directions and repairs of the levees, and so far repealing the Statute of 7th February, 1829, concerning roads and levees, the last act remains in force and must govern the rights of the reparian proprietors until the powers confirmed by the Statute of 1840 have been legally exercised.

3. The object of section 16 of the Statute of 28th March, 1840, creating a police jury for that part of the parish of Orleans on the right bank of the river, was merely to make the owners of back lots contribute with the front proprietors to the construction and repairs of levees, which afford them all equal protection. It provides at whose expense they shall be made and repaired, but is silent as to the manner of making them, and as to the place whence the necessary materials are to be taken. *De Ben* v. *Gerard*, 30.

4. It being the duty of the police jury of each parish to provide a sufficient house for the courts and jurors, and a good and sufficient jail to receive and keep prisoners, where buildings have been thus provided by a parish for the State, and are used and occupied for public purposes, they are not liable to seizure and sale under execution against the police jury. *Police Jury of West Baton Rouge* v. *Michel et al.*, 84.

5. No action will lie against a police jury representing a parish, for the amount of an adjudication, under the Statute of 7th February, 1829, for the construction of a levee in front of land belonging to an absentee, until the plaintiff has exhausted his remedy against the land.

6. Where in an action against a police jury the tax-payers are the parties to be affected, they will not be held to allegations in pleading made in error by their agents. *Brown* v. *The Police Jury of Madison*, 180.

7. A claim for work done to a public levee, under the provisions of the Statute of 28 April, 1847, relative to the parish of Tensas, may be recovered in an action against the police jury of the parish, unless it be shown that they had provided the specific fund which that act, (s. 5), makes it their duty to raise, and a satisfactory reason be given for their failure to pay the plaintiff out of it. *Neely* v. *The Police Jury of Tensas*, 181.

POSSESSORY ACTION.

See PRACTICE.

PRACTICE.

I. *Of the Parties who may Sue or be Sued.*

1. When a principal is domiciled in a foreign country, having an agent here, an action against the former must be instituted before the court of the agent's domicil. *Fuselier, Administrator* v. *Robin*, 61.

II. *Pleadings.*

2. When the cause of action is not stated in the petition with sufficient precision, and the effect has been to surprise the defendant and prevent her from setting up the proper defence, the case will be remanded, with leave to amend. *Gremillon* v. *Bonaventure*, 60.

3. Where one who claims to be the owner of a slave found in the possession of a third person, causes him to be placed in jail, and commences a petitory action to recover him, an action for damages for the illegal imprisonment will be prescribed by one year from the termination of the imprisonment. The prescription is not suspended by the pending of the petitory action. The rule *Contra non valentam*, &c., is inapplicable to such a case, as the damages might have been claimed in re-convention, being connected with and incidental to the action for the recovery of the slave. C. P. 375. *Solomon* v. *Cavelier*, 136.

4. Pleas in reconvention must be set forth with the same certainty, as to amounts, dates, &c., as if the party opposing them were plaintiff in a direct action.

5. Where evidence in support of a reconventional demand has been illegally received, though excepted to on the ground of its inadmissibility on account of the vagueness and uncertainty of the plea in reconvention, the court of the first instance cannot deprive the party of the rights acquired under his bill of exceptions, by offering to grant a new trial if he would make any showing contradictory of the evidence so received. *McMasters* v. *Palmer*, 381.

6. A plea that certain notes sued upon, having been executed before the bankruptcy of the party, were secured by a deed of trust of real estate, and that plaintiff had re-

ceived payment by purchasing the property and paying for it with the notes, is not inconsistent with a plea by defendant of his discharge as a bankrupt. *Linton et al.* v. *Stanton*, 401.

7. Where another action is pending before the same tribunal, between the same parties, for the same object, and growing out of the same cause of action, the case must be dismissed, if the exception *litis pendentis* be pleaded. C. C. 335. *Dick* v. *Gilmer*, 520.

III. *Possessory and Petitory Action.*

8. A plaintiff in a possessory action, who does not claim either as owner, or with the consent of the owner, must show that he was in actual possession of the land claimed when the eviction complained of occurred. *Dawson* v. *Headen*, 515.

9. A party who obtained possession of the land in controversy, not as owner, but with the consent and authorization of another, cannot maintain a possessory action against the latter. *Anderson* v. *Smith et al.*, 525.

IV. *Hypothecary Action.*

10. In an action to enforce the tacit mortgage of a minor, against real estate held by a third person under a title derived from the tutor, the burden of proving that there is other property first liable for plaintiff's claim is upon such third person. *Alva* v. *Jamet et al.*, 353.

V. *Of Practice Generally.*

11. Where a plaintiff, who had bonded a slave seized under a sequestration, was ordered to produce him at the trial for the purpose of identifying him, but, on failing to produce him, "offered to admit any fact which the defendant will state that he could prove by the presence of the slave, and which could not be proved in his absence," the defendant cannot, under such circumstances, be injured by bringing the cause to a hearing on the merits. *Gibson* v. *White et al.*, 14.

12. Money deposited with a sheriff, under article 3034 of the Civil Code, as security for the release of property provisionally seized, must be restored to the depositor on the dissolution of the seizure. *Medd* v. *Downing*, 34.

13. At any time before a verdict is rendered the jury may withdraw it, under leave of the court, in order to make it more explicit. *Broussard* v. *Nolan*, 55.

14. A mandamus will not be granted, to compel a judge of a district court, in the trial of a rule to show cause why a party should not be punished for a contempt, to allow defendant to except to the admission of testimony and to his refusal to permit the evidence to be reduced to writing, nor to compel him to allow an appeal. *Ex parte Powers et al.*, 105.

15. Plaintiff, in an action commenced by attachment, will be entitled to a judgment by default, against an absconding debtor, where a copy of the citation and petition were left with the wife of the defendant at his residence. The appointment of a curator *ad hoc* is unnecessary in such a case. *Thomas* v. *Wetzler*, 184.

16. An overseer, employed by the year, may obtain a sequestration of the crop on which he has a privilege, on making the affidavit required by law, though the year have not expired for which he was hired and the amount of his salary be not yet due. C. P. 275, § 6. Statute 7th April, 1826, s. 9. It is not essential that the debt should have matured before a party can resort to this conservative measure. *Gardner* v. *Shipley*, 184.

17. Where a judgment has been obtained here against a debtor, who subsequently died, in another State, leaving residuary legatees, who received their share of his succession, the administration of which in this State had been closed, but who are absentees, plaintiffs cannot proceed against them by appointing a curator *ad hoc* to represent them, and by a rule on them to show cause why execution should not issue against them on the judgment against their testator. The recourse which plaintiffs undertake to exercise being personal and involving matters *en pais*, they must proceed by an action in the ordinary form. *Reynolds et al.* v. *Horn et al.*, 187.

18. The fact that the petition and citation were not served in the French language, the maternal tongue of the defendant, must be pleaded *in limine litis*. It affords no ground for reversing the judgment on appeal, nor for enjoining its execution. *Ortes et al.* v. *Lallande et al.*, 188.

19. Where a plaintiff, who had sued to recover a sum from defendaut, and filed a supplemental petition praying for the rescision of sales and transfers of property alleged to have been made by defendant in fraud of his creditors, takes a rule on defendant to show cause why the issues presented by the petition and supplemental petition should not be tried separately, and the rule is made absolute, the court will be considered as having exercised its discretion as to the mode of trial best calculated to promote the ends of justice; and when

no injury has resulted to the defendant therefrom, its decision will not be interfered with. *Cunningham* v. *Erwin*, 198.

20. An intervenor cannot complain of want of notice of an order made in open court, between the original parties. An intervenor is presumed to be always in court, ready to plead. C. P. 391. *Thompson, Executor* v. *Mylne*, 206.

21. Where a case has been finally decided on its merits by the Supreme Court, and the contest still pending relates merely to the execution of the judgment, it is too late to intervene therein. C. P. 389, 394. *Ib.*, 212.

22. After a plea of prescription by an administrator, in an action against him for a debt due by the succession, it is too late to urge that the suit was prematurely brought, he never having refused to acknowledge the debt. *Bird* v. *Pate, Administrator*, 225.

23. It is not necessary to serve on the defendant copies of acts or documents annexed to the petition, though the petition itself states that they form part of it. C. P. 175. *Osborn* v. *Chambers*, 296.

24. A new trial will not be allowed on account of the absence of plaintiff's attorney, caused by the ignorance of the latter of the month in which the term of the court was to be held, where the commencement of the term was fixed by law, and the plaintiff was in the parish in which the court was held and aware of the day on which the term would commence, and might have appeared and asked a continuance, and, if unsuccessful, have employed other counsel.

25. The fact that no return had been made on *ex parte* order of survey, at the time of trial, is no ground for a new trial. It was a matter to be submitted to the discretion of the court on an application for a continuance.

26. The fact of a case being set for trial and tried on the same day, in a district court in the country, will not entitle a party to a new trial. It is a matter to be submitted to the discretion of the court, on an application for a continuance. *Dwight* v. *Richard*, 240.

27. Where a defendant, who has been personally cited in an action, fails to appear personally or by counsel, and neglects to set up grounds of defence then existing, it is his own *laches*, and he cannot be relieved from its effects. *Niblett* v. *Scott et al.*, 245.

28. A party cannot controvert the title of one under whom he claims. *Hughey et al.* v. *Barrow*, 248.

29. Where a plaintiff, in an action on a note given to him in pledge, admits, by a supplemental answer, defendant's right to pay the debt in the notes of a particular bank, and avers his readiness to receive them, but defendant makes no tender, and answers denying any cause of action against him, and plaintiff, in another supplemental petition subsequently filed, avers that he has become the absolute owner of the notes by purchase at a judicial sale, and withdraws his consent to receive payment in the notes of the bank, defendant cannot require that judgment should be rendered payable in the notes of the bank. *Brown* v. *Routh*, 270.

30. A third opponent cannot arrest the sale of the property in dispute, nor claim damages against the sheriff for executing the judgment, unless he obtain an injunction, and give security. C. P. 399.

31. Where the principal demand has been tried, no further proceedings can be had on the intervention. The intervenor must be held to have abandoned that remedy. *Jones* v. *Lawrence*, 279.

32. Where, on an application for a new trial, on the ground of the sickness of one of the plaintiff's counsel and the absence of the other on professional business elsewhere, there is no allegation that the judgment is contrary to law and evidence, nor that justice requires its revision, a new trial must be refused. *Hewlett* v. *Henderson*, 333.

33. Where a court of the first instance is not required to pronounce on an exception of *lis pendens*, before going to trial on the merits, it will be considered as waived. *Conrey* v. *Harrison et al.*, 349.

34. In an action for freedom plaintiff was declared to be free, and the case was remanded for further proceedings as between the defendant and warrantor. The warrantor subsequently instituted an action to annul the judgment, on the ground that it was obtained through fraud; but there was no evidence that any further proceedings were had under the decree remanding the case, nor any allegations or proof that the warrantor had refunded the price to the party by whom he was cited. On an exception that the petition presented no grounds sufficient to support an action of nullity: *Held*, that the exception should be sustained. *Miller* v. *Miller et al.*, 354.

35. The return of a sheriff that he served a copy of the citation and petition on defendant, by leaving them at his domicil in a certain street, in the hands of his wife, a free person, above the age of fourteen, does not show a sufficient service under article 189 C. P. It should have stated the absence of the defendant from home, and that the person with whom the citation was left was living there. *Oakey* v. *Drummond*, 363.

36. Where the report made by a sworn surveyer, appointed by the court having cognizance of an action of boundary, is de-

fective, and the plan annexed to it is not in conformity with the titles, the report should be rejected, and a new survey ordered. C. C. 837. The surveyor is but an expert, and his operations are always under the control of the court. The defectiveness of the report is no ground for non-suiting the plaintiff. *Union Bank of Louisiana* v. *Guillotte*, 382.

37. On an application for a new trial, on the ground of newly discovered evidence, it must clearly appear, not only that the discovery has been made since the trial, but that the party "had used every effort and diligence in his power," to procure the necessary testimony previously. C. P. 561. *Linton et al.* v. *Stanton*, 401.

38. Where there was a want of due diligence on the part of one who applies for a new trial, and the evidence to introduce which it was prayed for was not discovered after the trial, and its character was such that the party was bound to know its materiality before the trial, and the affidavit does not disclose enough to make out a defence, a new trial will not be granted. *Wilson et al.* v. *Churchman*, 452.

39. Where there is sufficient time between the date and the return day of a citation, the fact that the return day was not during any regular term of the court is immaterial. *Patout, Administratrix* v. *Rawle*, 485.

40. Where, in an action for slander of title, the petition prays that defendants may be compelled to set forth and establish their titles to the land in dispute, if any they have, and that plaintiff may have judgment for his land, quieting him in his title, and that defendants be prohibited from setting up title to the same, and for damages, the petition cannot be amended by a supplemental answer containing the grounds of a petitory action against the defendants, in which, for the purpose of the action, their possession is conceded.

41. The object of the action of *jactitation* is to protect the ownership of lands from disturbance by slander of the title; but the action has, in no instance, been maintained against a person in possession under a title. The possessory and petitory actions, which are regulated by positive law, give the party injured by the adverse possession every remedy that can be needed. *Copley* v. *Hasson et al.*, 531.

PRESCRIPTION.

1. The prescription of one year established by article 1989 of the Civil Code, does not apply to an action to have a simulated sale decreed to be such. *Dawson et al.* v. *Holbert, Tutrix, et al.*, 36.

2. A note not payable to order or bearer, is not prescribed by five years. C. C. 3505. *Graves* v. *Routh, Administrator*, 126.

3. Where one who claims to be the owner of a slave found in the possession of a third person, causes him to be placed in jail, and commences a petitory action to recover him, an action for damages for the illegal imprisonment will be prescribed by one year from the termination of the imprisonment. The prescription is not suspended by the pending of the petitory action. The rule *Contra non valentem*, &c., is inapplicable to such a case, as the damages might have been claimed in reconvention, being connected with and incidental to the action for the recovery of the slave. C. P. 375. *Solomon* v. *Cavalier*, 136.

4. An action to recover immovable property is a real action, and not affected by the prescription of ten years established by article 3508 C. C. Nor does that prescription apply to judgments. *Judson, Administrator* v. *Connolly*, 169.

5. All acts or hindrances—*voies de fait et empêchemens*, coming from the debtor, which deprive the creditor of the remedy and forms contemplated at the time of the contract, suspend prescription. *Boyle* v. *Mann*, 170.

6. The prescription of five years, C. C. 3505, does not apply to a note not negotiable. Such a note is prescribed by ten years. C. C. 3508. *Spiller* v. *Davidson*, 171.

7. Creditors cannot plead a prescription which would not have availed the debtor if pleaded by him. *Bird* v. *Pate, Administrator*, 225.

8. Where the maker of a note was, before its execution, and until his death, a resident of this State, and his succession was opened, and all of his available property situated here, the fact that the note was dated and payable in another State, will not, in an action on the note against his succession here, make the case an exception to the general rule that the *lex fori* governs prescription.

9. To ascertain whether an instrument is prescribed by our laws, its character must be determined with reference to our own jurisprudence. *Young, State Commissioner, &c.*, v. *Crossgrove, Administrator*, 233.

10. In sales for taxes the assessment stands in lieu of the judgment in ordinary judicial sales, and the party relying on a sale of that description is bound to show its existence and legality. Want of proof of a proper assessment and of a sufficient description of the land, where no actual pos-

session has followed, are not defects that can be cured by the prescription of five years, under the Statute of 10th March, 1834, s. 4.

11. The purchase without warranty, by a third person, of the right, title and interest of a party in a tract of land bought by him at a public sale for taxes, but of which he never had possession, cannot form the basis of prescription. The second purchaser was apprized of the nature of his title, and that it was defective. *Hughey et al.* v. *Barrow*, 248.

12. Where a note is made payable two years after date, but the maker, on its face, "reserves to himself the right to postpone payment for five years," and the latter makes no tender of payment at the end of two years, nor subsequently, he must be considered as having availed himself of the reservation; and prescription will not begin to run against the payee until the expiration of the term of five years. *Bacchus* v. *Moreau*, 313.

13. Where an order of seizure and sale, issued for the amount of a note secured by mortgage and containing the pact *de non alienando*, is enjoined by a third person, alleging himself to be the owner of the property mortgaged by a purchase since the date of the mortgage, who, after a judgment rendered against him in the first instance, protracts the litigation by repeated appeals, such third person cannot avail himself of the time which elapsed while the plaintiff was thus judicially restrained from prosecuting his action, as part of the period necessary to extinguish the note by prescription. *Per Curiam:* One who, under the pretence of rights which have been adjudged to be unfounded, unlawfully uses the process of a court to restrain another in the prosecution of a right, cannot avail himself of the delay, which his own wrong has occasioned, to defeat that right.

14. One to whom a note belonging to a succession has been transferred, by the curator, irregularly, and to the detriment of the creditors or heirs of the deceased, will be considered as a trustee for them; but his possession of the note, as holder, will enable him to sue, for the purpose of arresting prescription. *Stanbrough* v. *McCall*, 322.

15. Where a creditor, whose claim is secured by mortgage, may proceed against the same person by a personal action or by executory proceedings, the institution of proceedings *viâ executiva* will interrupt the prescription running against the personal action; and this interruption is continuous, preserving the personal action while the executory proceedings are being prosecuted, and *vice versa*. *Stanbrough* v. *McCall, on re-hearing*, 322.

16. An administrator, who has been condemned individually to refund to a register of mortgages an amount recovered from the latter by a mortgagee whose mortgage had been illegally erased at the instance of the administrator, the action against the creditors to recover the amount would be prescribed, under article 1176 C. C., by three years from the date of the order or judgment under which the payment was made to them.

17. Interest may be allowed by way of damages. *Landreaux* v. *Marsoudet*, 334.

18. The administrator of a succession, being an officer appointed by the court for the discharge of certain duties, must be considered always present in court, like a party to proceedings there pending; and no prescription can commence to run in his favor before the homologation of his account. *Courtade* v. *Chamberlain et al.*, 368.

19. An action against the maker of a promissory note will be prescribed by five years from its maturity, though the maker reside during that time in another State, where the holder was aware of the place of his residence.

20. An endorsement of a partial payment made on a promissory note, where there was no evidence to show in whose writing it was, nor when it was made, will not interrupt prescription. *McMasters* v. *Mathers*, 418.

21. Where proof of the vacancy of a succession is indispensable to support a plea of prescription, the burden of proving that the succession was vacant rests upon the the party pleading the prescription.

22. The institution of an action does not interrupt prescription only while it lasts. Prescription being once interrupted, the previous time can never afterwards be computed to make up the time necessary to prescribe. *Badon* v. *Bahan*, 467.

23. Prescription as to the original debtor is not interrupted by an hypothecary proceeding against the mortgaged property in the hands of a third person; nor will it be interrupted by a partial payment made through the judicial sale produced by such hypothecary proceedings.

24. A debtor who makes a payment is considered as interrupting the prescription running in his favor, because there is an implied acknowledgment of the creditor's right. But no such acknowledgment can be inferred from a payment made, not by the debtor, but without his knowledge or participation, and through a judicial proceeding to which he was not a party. *Jacobs* v. *Calderwood*, 509.

25. Compensation for injuries sustained by a purchaser in consequence of defects in

the thing sold, can only be recovered in a redhibitory action, or in an action *quanti minoris*; and in either action the plaintiff must allege and prove a tender of the thing sold. *Fisk* v. *Proctor*, 562.

PRIVILEGE.

1. Advances made to the captain and owners of a steamer in the home port, to enable him to pay for stores and provisions for the boat, arrears of wages due the crew, and for the expenses due to third persons upon merchandize shipped on the steamer, confer no privilege; the party by whom the advances are made is not legally subrogated to the privileges of the furnishers of provisions and crew. The word *supplies* in the 8th paragraph of article 3204 C. C. applies to materials sold or furnished to the vessel, and not to advances of money.

2. The 7th paragraph of article 3204 applies to sums lent the captain, at a port not the home port, in the absence of the owner, and for the necessities of the vessel, that she may be enabled to complete her voyage.

3. Advances made to the captain and owner of a steamer in a home port, to enable him to pay charges due to other parties on merchandize, in order to procure it as freight for his steamer, are not such advances as are contemplated by paragraph 8 of article 3204 of the Civil Code. *Hyde et al.* v. *Culver et al.*, 9.

4. Mechanics, laborers, and furnishers of materials employed by one who has contracted for the erection of a building, are only entitled to the same privilege as the contractor, and where the contractor has failed to register his contract as required by law, those employed by him have no privilege. Statute 18th March, 1844, s. 4. C. C. 2743, 2744, 2746, 3239. *Allen, Executrix* v. *Wills et al.*, 97.

5. A creditor for money loaned to a contractor for the erection of buildings is not within the Statute of 18th March, 1844. No privilege is conferred on such a creditor by that Statute.

6. The Statute of 18th March, 1844, confers on mechanics, laborers, and furnishers of materials a privilege on the amount due by the proprietor, and a privilege on the building. If the contractor has not secured himself a privilege upon the building by recording his contract, he must rank as an ordinary creditor of the proprietor, and the mechanics, &c., cannot be subrogated to a privilege which does not exist; but this does not effect their privilege on what the proprietor owes. *The First Municipality* v. *Bell et al.*, 121,

7. Where the consignees of a vessel, who had had other transactions with the owner, make advances to the captain, for services and supplies furnished to the vessel, for towage, pilotage, custom-house charges, and furnish him with cash for other purposes not shown, and, though informed by the owner of his intention to sell the vessel, take a bill of exchange on him, drawn by the master at thirty days, for the amount, and permit the vessel to depart, they must be considered as having made the advances solely on the personal credit of the owner, and cannot claim any lien, or tacit hypothecation, for the amount advanced, on the vessel in the hands of the vendee of one who had purchased the vessel while on her voyage to the port to which she was consigned. *Harned* v. *Churchman et al.*, 310.

8 Where the vendor of a tract of land having one arpent and three-quarters front, received five-sevenths of the price in cash, and, for the balance, took a note of the purchaser, identified with the act of sale by the paraph of the notary, the act reciting that, "pour assurer le paiement du dit billet à son échéance, ainsi que de tous frais et intérêts, hypothèque spéciale est réservé seulement sur trois quarts d'arpent du côté d'en haut de la dite propriété, l'acquéreur s'obligeant de ne les point aliéner, ou hypothéquer, au préjudice des présentes," the vendor's privilege not being necessarily inconsistent with this clause, will be considered as retained upon the whole tract; nor can the enforcement of the mortgage, by an order of seizure and sale, operate as an implied renunciation of the privilege.

9. The renunciation of the vendor's privilege must be express; or result by cogent implication. A mere doubt will not suffice to deprive a party of what the law presumes in his favor.

10. A mortgage and privilege may coexist on the same thing. They are distinct rights, not exclusive of each other. *Bacchus* v. *Moreau*, 313.

11. Medical services, rendered after the death of a party to slaves belonging to his succession, are privileged, being for the benefit of the creditors and heirs. *Succession of Gremillon*, 411.

PROCURATION.

See Mandate.

PROMISSORY NOTES.

See Bills of Exchange, &c.

PROVISIONAL SEIZURE.

1. A provisional seizure may be dissolved summarily by a rule to show cause, where the apprehensions of the plaintiff, which led to the seizure, are clearly proved to be unfounded. *Salter et al.* v. *Duggan et al.*, 280.

2. Though a writ of provisional seizure was illegally issued, and the illegality was alleged in the answer, yet, if no application was made to the court below, to quash the proceedings under the writ, and there was no action of the court upon it, the illegality cannot be considered on appeal. *Ledoux et al.* v. *Smith*, 482.

PUBLIC THINGS.

1. Article 3411 C. C. applies to the abandonment of the possession of moveables only. An abandonment of the title to land must be made in writing. *Hereford* v. *The Police Jury of West Baton Rouge*, 172.

2. To enable a party to become the owner of a thing which he finds, it is necessary that the former owner should have completely relinquished or abandoned it. C. C. 3384, 3387. *Eastman* v. *Harris*, 193.

PUBLIC WAYS.

See LEVEES AND ROADS.

RECONVENTION.

See PRACTICE.

RECORDER OF MORTGAGES.

Where a recorder of mortgages, who, on the authority and at the instance of the administrator of a succession, illegally cancelled a mortgage, is compelled by a judgment to pay the amount of the mortgage, with interest and the costs of the suit instituted by the mortgagee, he may recover, against the administrator individually, the amount so paid, with interest from judicial demand, and costs of suit. *Landreaux* v. *Marsoudet*, 334.

REDHIBITION.

See SALE.

RES-JUDICATA.

See JUDGMENT.

ROADS.

See LEVEES.

1. No judgment can be rendered in favor of a party, declaring him entitled to a right of way over the estate of an adjoining proprietor on the ground of his being cut off from access to the public road or river, without showing, by proof of where the shortest road can be obtained with the least injury to the party required to submit to the servitude, from which of the adjoining proprietors the passage may be legally exacted. It may be that the passage is not due from the party from whom it is claimed, but from another contiguous proprietor. *Adams* v. *Harrison*, 165.

SALE.

I. *The Form and Validity of the Contract.*

1. Where a third person purchases property at a sale under execution, with money furnished in whole or in part by the insolvent debtor, under an arrangement with the latter that the property shall be held by the purchaser as a trustee for the benefit of a child of the debtor, the title of the debtor will have been divested, but in fraud of his creditors. The transaction will be subject to the prescription of one year, established by article 1989, commencing, not from the date of the sheriff's deed, but from the time when the complaining creditor obtained a judgment against the debtor. *Dawson et al.* v. *Holbert, Tutrix, et al.*, 36.

2. A verbal agreement for the sale of land or slaves is not null. The defect of such a contract relates only to the proof; and, if one of the parties acknowledges the agreement, or permits parol evidence of it to be given without opposition, it must be carried into effect. *Jacobs* v. *Davis*, 39.

3. One who purchases, at a sale of the assets of a bank made by commissioners appointed to liquidate its affairs, a note made by an insolvent, will acquire no greater right against the debtor than the bank had at the time of the sale. *McAuley* v. *His Creditors*, 52.

II. *Of the Causes of Nullity and Rescission.*

4. Where, under an agreement to sell merchandize, delivery is obtained by fraudulent pretences, the possessor acquires no interest that can enable a creditor of his,

who seizes the property, to hold it against the true owner. *Galbraith et al.* v. *Davis*, 95.

3. The object of article 2622 C. C. which provides that, "he against whom a litigious right has been transferred may get himself released by paying to the transferee the real price of the transfer, with interest from its date," is to prevent unnecessary litigation. But where a defendant, instead of paying the price for which the right was transferred. and thereby putting an end to the litigation, continues to contest the suit, opposes the plaintiff's right to recover, and protracts the litigation, he defeats the very object of the law, and cannot avail himself of the provision established in his favor. *Leftwich et al.* v. *Brown*, 104.

6. An attachment by a creditor of a fraudulent vendee of real estate, not proved to have had notice of the nature of the vendee's title, levied on the property while in the possession of his debtor, will hold the property against creditors of the fraudulent vendor. *Stockton* v. *Craddick*, 282.

7. If there be anything unusual or irregular in a sale of property made by a party in possession but without authority to sell, the title of the real owner will not be affected by it, any more than it would be if the purchaser were not in good faith. *McGregor et al.* v. *Ball*, 289.

8. Simulation, as between the parties to an authentic act, cannot be proved by parol. *Gaultier* v. *Briault*, 487.

III. *Of Delivery.*

9. No recovery can be had in an action for the price of plaintiff's interest in a tract of land without proof of delivery of possession, where the price was payable only after delivery of possession, and such delivery was alleged in the petition. *Wilson* v. *Phillips*, 158.

10. The acknowledgment by the purchaser, in an act of sale of real estate, of possession of the land sold, refers exclu sively to the possession which the vendor had. If a third person were in possession at the time, and the vendor conceals that fact from the purchaser, he is guilty of a fraud, which will entitle the purchaser to relief, notwithstanding his acknowledgment.

11. That the law (C. C. 2455) considers the delivery of immovable property as always accompanying the public act which transfers it, is true, so far as the vendor is concerned, and every obstacle afterwards interposed by him to prevent the corporeal possession of the purchaser is a trespass; but this does not release him from the obligation of actual delivery of the thing sold, when in possession of another at the time of the sale.

12. The vendor of a lot of ground who was aware, at the time of the sale, that a part of the lot was claimed by, and in possession of, a third person, though he subsequently offers to take back the property, refund the price, and pay for the improvements, has no claim against the purchaser before delivering the entire thing sold. C. C. 2450. The latter is not bound to accept his offer to take back the property, and refund the price, and pay for the improvements. *Flynn* v. *Moore*, 400.

13. Without an assignment, or proof of actual delivery, the possession of the receipts given by a receiver of public moneys, for the price of public lands, will give the holder no better title to them than he would have to a promissory note payable to the order of the purchaser of the lands, held by him without endorsement or proof of transfer and delivery. Article 2612 C. C. supposes that when the title is not transferable by delivery, and does not bear upon its face evidence of the lawful possession of the holder, proof of the delivery must be made. *Terry* v. *Hennen*, 458.

IV. *Warranty.*

14. One who purchases land, assuming to pay, as part of the price, a balance due by his vendor to the original owner who purchased with full knowledge of the existence of a servitude on the property, cannot withhold any part of the amount assumed, on the ground of a concealment by his immediate vendor of the existence of the servitude. There is no privity between the original vendor and the last purchaser; the latter must look to his immediate vendor. *Lejeune* v. *Hebert*, 59.

15. Where one who had purchased real estate in a State in which the common law prevails, with full warranty, is evicted in an action of ejectment instituted by a third person, and, without contesting the claim of the latter in the court of the last resort, purchases his claim before delivery of the premises by the sheriff to such third person, his recourse against his warrantors will not be thereby affected. The submission to the judgment by an attornment was no waiver of the right to prosecute the writ of error; the rule that the voluntary execution of a judgment or decree is a waiver of, or bar to, an appeal or writ of error, has no place in the common law. Nor was the purchase from the plaintiff in ejectment a release at law of the errors in the judgment, nor could it be pleaded in bar of a writ of error prosecuted for the exclusive benefit of the purchaser.

16. By the common law one judgment in ejectment is no bar to another, and not being a decision on the mere right does not prejudice the proprietor in his assertion of it in a higher degree of action.

17. To recover against a vendor of real estate on his covenant of warranty, under the laws of Mississippi, the purchaser who has been evicted by a judgment, in the absence of notice to the vendor of the former suit, must show that the recovery was by a title paramount to that conveyed to him.

18. Where a purchaser of land is evicted by a third person under a judgment in an action of ejectment, if his vendor defended the action himself or by an agent authorized to represent him in the matter, or if he had sufficient notice of the institution of the action so that he might have defended it, his covenant of warranty, by the law of Mississippi, is broken; otherwise the judgment will not be binding on him.

19. In an action against a vendor of real estate situated in another State on a covenant of warranty in the act of sale executed here, founded on an eviction by a third person under a judgment rendered in that State, the notice of the institution of the action by such third person required to be given to the vendor in order to render the judgment conclusive as to the breach of warranty, must be such as the laws of that State require, and not such as would be necessary under our law had the land and action been in this State. The provisions of articles 2493, 2494, C. C., which bind the vendor by a judgment of eviction against the purchaser even in the absence of a notification of the suit, unless the vendor show that he possessed proofs which would have sustained his title, and which, for want of such notice to him, have not been made available, does not apply to such a case. *Kling* v. *Sejour et ux.*, 128.

V. *Redhibition and Action Quanti Minoris.*

21. Where part of a flock of sheep, purchased at a succession sale, die within three days thereafter of a disease proved to have been incurable, the vendor must bear the loss. C. C, 2508. In such a case the sale cannot be rescinded, but the price of the sheep which have died should be deducted from the price of the flock. *Michoud at al., Executors,* v. *Marquet et al.*, 51.

22. Where a slave sold on the 5th, was found to be seriously ill of a typhus fever on the 7th of the month, of which he died on the next day, the disease will be presumed to have existed at the time of the sale, in the absence of evidence that, though subsequently developed, it did not exist at that time. C. C. 2508. *Landry* v. *Peterson et al.*, 96.

23. The clause of art. 3508 C. C. which provides that "if the vice has made its appearance within three days immediately following the sale, it is presumed to have existed before the sale," does not apply to vices of character *Anderson* v. *Dacosta*, 136.

24. Proof that plaintiff's attorney offered to defendant to rescind the sale of a slave on receiving back the price, and that the offer was rejected by defendant, who said that a law suit was unavoidable, will dispense with the necessity of a tender of the slave before suing to rescind the sale. *Nott et ux.*, v. *Marchesseau*, 344.

25. Proof of the existence of disease in a slave before the sale, and of his death, from that disease within three weeks after the sale, raises a very strong probability that the disease was incurable at the date of the sale; and very clear and cogent proof should be required from the vendor to overthrow the presumption.

26. Art. 2518 C. C. which declares that "the redhibitory vice of one of several things sold together gives rise to the redhibition of all, if the things were matched, as a pair of horses or a yoke of oxen," is inapplicable to the case of a family of slaves, consisting of a father and mother, sold as field hands, and their infant child. *Per Cur:* The right to a total rescission only arises, when the things sold are so dependent on each other for their usefulness, that the loss or unsoundness of one would render those remaining comparatively valueless, and where their natural dependence and peculiar fitness relatively to each other in a particular service was the principal motive of the purchase. That the two examples given in art. 2518 are mere illustrations of the rule, and that the principle may be extended to other things, is conceded; but the things must be *matched*, in the sense in which that term is used in the Code. *Bertrand* v. *Arcueil*, 430.

VI. *Transfer of Debts.*

27. Notice to a person, before his appointment as agent, will not be binding on the principal.

28. The Code, while it requires notice to a debtor of the transfer of a debt, has not prescribed any particular form in which it must be given. C. C. 2613. Nor will any misdescription, even as to the amount of the debt, vitiate the notice, where, from the rest of the description and the circum-

stances of the case, the error could not have misled the party notified. *Plympton* v. *Preston et al.*, 356.

VII. *Judicial and Forced Sales.*

29. Whatever effect the want of appraisement may have on a sale of moveable property under execution between the parties to the sale, third persons cannot consider such a sale as null on that account. *Chapman, Assignee,* v. *The N. O. Gas Light Co. et al.*, 153.

30. A sale under execution of "all the rights, claims, demands and interest which the heirs of A. have upon their mother and natural tutrix, on account of their inheritance from &c.," is void for vagueness and insufficiency in the description of the thing sold. The nature of the rights, interest, claims and demands should have been so stated as to give bidders a clue to their value. Art. 647 C. P. does not dispense with a proper description of the rights and credits seized. *Gales* v. *Christy, Assignee,* 293.

31. An agreement made by the sheriff with a purchaser, subsequently to the adjudication at a judicial sale, that the price should remain in the hands of the sheriff until a good and satisfactory title was given, and, in defalt thereof, that he would return it, can invalidate the adjudication. *Bacchus* v. *Moreau*, 313.

32. A judicial sale of all the right, title and interest of a creditor in any further dividend that may be declared among the creditors of an insolvent, is a sale of the debt due to the creditor (C. P 690, 694); and where the debt was due by a bill or note, which was never in the actual possession of the sheriff, the seizure is invalid, the sale null, and the purchaser may recover back the price paid by him. *Gaines* v. *Merchants' Bank*, 369.

24. A party seeking to recover back, on the ground of the nullity of the sale, money paid to a judgment creditor as the price of property sold under execution, must pursue the course pointed out by art. 711 C. P., and make the judgment debtor a party to the action; and the judgment obtained against him and the creditor jointly must provide that execution shall be first taken out against the debtor, but, on its being returned unsatisfied, that execution may be issued against the creditor. *Per Curiam:* Art. 711 C. P. relates to the eviction of the purchaser from the thing purchased by him; but it is declaratory of a principle relating to cases where the sale is virtually defeated from other causes. *Gaines* v. *Merchants' Bank*, 369.

VIII. *Sales at Auction.*

35. The remedy by a sale *à la folle enchère* is a severe one, and must be confined to cases coming clearly within the provisions of the law.

36. Art. 2590 of the Civil Code contemplates the terms of the sale *à la folle enchère* shall be the same as those of the first adjudication; and where an auction sale was made for a price payable partly in cash and the balance on credit, but, on a re-sale *à la folle enchère*, the property was offered and sold for cash only, the difference between the price of the first and second sale will not be considered a just measure of the injury sustained in consequence of the first purchaser's failure to comply with his contract; nor will it make any difference that the change was attributable to delays produced by the failure of the first purchaser, during which the note, which was to have been assumed for the credit part of the price, matured. *Guillotte* v. *Jennings*, 242.

IX. *Of Sales generally.*

37. The last purchaser is protected by the good faith of his vendor. *Tillman, Trustee &c.* v. *Drake*, 16.

38. Where a party sold to plaintiff a tract of land acquired from a third person, supposed to contain a certain quantity, and plaintiff afterward re-sold, by public act, to his vendor a certain number of acres of this land, and the latter sold that quantity to defendant, and it is subsequently ascertained that the tract originally sold to plaintiff did not contain the quantity it was supposed to do, plaintiff cannot hold all the land that he would be entitled to, if there had been no deficiency. Whatever secret equities may exist between plaintiff and his vendor, the former cannot claim the benefit of them against a subsequent purchaser in good faith. Having placed on the public records the title on the faith of which defendant purchased, he must bear the consequences of having presented the rights of his vendor in a false aspect. *Boudreau* v. *Bergeron*, 83.

39. Where a proprietor who had divided a part of a tract of land into lots, leaving a space between those nearest the river and the public road, as well as the batture, and the remainder of the tract in the rear beyond the lots, undivided and vacant, sells the lots in conformity with a prospectus which recites that "the portion of the front, of the batture, of the pasture, and of the cypress swamp corresponding with the lots offered for sale, is abandoned in perpetuity in favor of the purchasers, to be by them en-

joyed in common, with this sole condition that the said purchasers shall not send in the common pasture but three head of animals for each lot, and shall cut wood in the swamp for their private use only, and not for sale," the interest of the purchasers in the front, batture, pasture and cypress swamp, is not a mere right of use, or usufruct, but the vendor will be considered as having completely divested himself of all right to the property, the term *abandonment* excluding any reservation as to the title as positively as the term *perpetuity* excludes any limitation of time. The conditions as to the use of the pasture land and wood, is intended merely to regulate the use among the purchasers, and does not conflict with, but is in furtherance of, the avowed objects of the sale.

40. If the terms used would, in a testament or donation, transfer the property, they will have the same effect in a contract of sale. *Arnauld et al.* v *Delachaise*, 109.

41. By the law of Kentucky where, under an absolute bill of sale of a slave, possession remains in the vendor, such possession is not merely *prima facie* evidence of fraud, but renders the sale fraudulent *per se*, and inoperative against creditors of the vendor who had no notice at the time of trusting the seller. But when possession is taken by the vendee before third persons have acquired any rights, the fact of the anterior continued possession would not be regarded as anything more than a suspicious circumstance, to be considered in appreciating the subsequent conduct of the parties. And, supposing the sale to have been real and in good faith, where the vendee, some time after the sale, takes possession of the property and holds it for several months, the reacquisition of possession by the vendor under a lease would not subject the property, in Kentucky, to the pursuit of creditors of the vendor who became such after the lease; nor would the purchaser lose his rights, as against the creditors of the lessee, by permitting the lessee to bring the property into this State, although the possession and declaration of the lessee, that he was owner, may have induced them to trust him. *Brown* v. *Glathary*, 124.

42. One who purchases from the government a certain number of acres of public land on which there was at the time wood cut and corded, has no claim to the wood, which had been separated from the land and was movable at the date of the purchase. The rights of the government were not transferred to the purchaser. C. C. 454, 456, 457, 459. *Woodruff et al.* v. *Roberts et al.*, 127.

43. *Bona fide* purchasers, without notice, who have paid the price, are not affected by secret equities existing between those under whom they hold and third persons, nor by their misrepresentations and frauds.

44. Third persons acquiring rights in good faith, under a judgment, have nothing to look to beyond the judgment and proceedings under it. If the minor be injured by the misrepresentations of the tutor, the remedy is against him, and the surety on his bond. *Pike et al.* v. *Monget, Tutor*, 227.

45 A purchaser at a probate sale, of lands held by the deceased under an act of sale from an assignee of the receipts given by the receiver of public moneys for the original price of the land made *sous seing privé* and never registered, who has been for several years in actual notorious possession under a recorded title, cannot be affected by one claiming under a subsequent purchase of the land from the party by whom the price was paid to the government, and to whom the patent had been issued. The last purchaser, being the assignee of the party by whom the receipts had been previously assigned, cannot take advantage of the defect of registry and is bound by the act *sous seing privé*. C. C. 2417, 3522, §5. *Per Curiam:* A purchaser will be charged with notice who buys, in the face of a notorious adverse possession, under a recorded title, for several years, from one who holds merely the legal title—the patent, which inures to the benefit of the equitable owner, without possession or apparent ownership. *McGill* v. *McGill*, 262.

46. Art. 2428 C. C., which declares that property claimed in an action cannot be alienated, pending an action, to the prejudice of the plaintiff, does not apply to one who purchases real estate pending an action against the owner to recover a balance alleged to be due by him as tutor, the action being not for the land itself but for a sum of money. And one who claims to exercise a mortgage on the property for the debt so ascertained to be due to the minors, must produce other evidence than the judgment to establish the debt, the judgment being as to the purchaser *res inter alios*. *Gales* v. *Christy, Assignee*, 293.

47. Every one, not prohibited by law, may buy or sell. *Plympton* v. *Preston et al.*, 356.

SEQUESTRATION.

1. An overseer, employed by the year, may obtain a sequestration of the crop on which he has a privilege, on making the affidavit required by law, though the year have

not expired for which he was hired and the amount of his salary be not yet due. C. P. 275, § 6. Statute 7 April, 1826, s. 9. It is not essential that the debt should have matured before a party can resort to this conservative measure. *Gardner* v. *Shipley*, 184.

2. A return on a *fi. fa.* that, it was impossible to make a demand upon the defendant personally and that no property of his could be found, will authorize the plaintiff to proceed against the surety on a bond given to release property which had been sequestered.

3. Where a sheriff inserts in a sequestration bond a condition not required by law, the condition will not be binding on the surety. The bond must be construed with reference to the law under which it was taken.

4. The legal intent of a sequestration bond being, under arts. 279, 280 C. P., to secure the delivery of the property to be applied towards the satisfaction of the plaintiff's claim when adjudged, and the penalty of the bond being inserted to secure the performance of that act, the injury sustained by the plaintiff, on a breach of the condition, will be the value of the property sequestered, which, had it been produced, would have been applied to the payment of his claim; but the mere amount of that claim, without reference to the value of the property sequestered, is not the measure of the injury sustained, nor of the liability of the sureties in the sequestration bond. *Barker et al.* v. *Morrison et al.*, 372.

5. Where a writ of sequestration has been improperly issued, it cannot be aided by proof adduced at the trial on the merits, nor by admissions of fact contained in the subsequent pleadings, the observance of the requisites prescribed by law being in the nature of a condition precedent.

6. An affidavit for a sequestration, which states that the defendant is indebted to the plaintiff "in about the sum of $4950," and that the "deponent verily believes the defendant will dispose of the property, or send it out of the jurisdiction of this court," not stating any specific sum as being due, nor the apprehensions of the party that the property will be removed during the pendency of the suit, is insufficient. *Per Curiam:* The word "during the pendency of the suit" may not be sacramental; but the necessity of the conservative process should substantially appear. Sequestrations, and other conservative remedies, by which the property of a party is wrested from his possession and taken into the custody of the law, before judgment, without notice, and upon the *ex parte* showing of the plaintiff, are extraordinary and rigorous, and hence the doctrine has been uniform that they are to be strictly construed, and that the requisites of the law must be observed upon pain of nullity. *Wilson et al.* v. *Churchman*, 452.

7. A third person, in actual possession of movables, under a *bona fide* purchase from the owner, before the issuing of a sequestration against the property at a suit of a creditor of the vendor, is entitled to hold possession, under bond, until the final hearing of the case. And where the purchaser was not made a party to the action against his vendor, he will not be precluded, under the statute of 5 March, 1842, from bonding in preference to the plaintiff, on the ground of his having permitted ten judicial days to elapse after the serving of the sequestration without exercising the the right of bonding. *Claiborne* v. *Bauries*, 567.

SHERIFF.

1. Where a debtor, in embarrassed circumstances, sells the contents of his shop to a third person, but remains in the shop acting as a salesman, and the purchaser, for his own advantage in business, retains the name of the former owner over the door, and the boxes and packages in the shop are marked with the name or the initials of the former owner, and, on an attempt by a sheriff to seize the goods as the property of the debtor, he and the purchaser inform the sheriff that they had been sold, but the purchaser does not exhibit his bill of sale, nor his books, offering nothing but his naked assertion to establish the sale, and the officer seizes and takes away the goods, but, on the trial of an action instituted against him by the purchaser for damages, brings the property into court, and offers to deliver it up if the court so direct, judgment will be rendered against the officer, though the court be satisfied of the *bonâ fides* of the sale, only for the restoration of the property, and for any damage it may have sustained from want of proper care while in the hands of the sheriff, and for costs. *Per Curiam:* The purchaser held out the vendor in a false light, to the public, and was bound to give the officer something more than his mere naked assertion as proof of sale. Nor are we prepared to say that there was such a legal change of possession as would perfect the sale against creditors, supposing it to have been real and *bonâ fide*. *McDonald* v. *Lewis, Sheriff*, 201.

2. A sheriff cannot recover under stat. 10 March, 1845, any compensation for the custody of slaves seized under an order of seizure and sale, when he never had any actual possession of the slaves—never ap-

pointed a keeper to them, nor was ever subjected to any expense or trouble for their safe keeping, or exercised any supervision over them. *Ledoux et al.* v. *Rucker*, 218.

3. Where a rule has been made absolute against a sheriff, in consequence of the insufficiency of the surety on a bond given for the release of property attached, adjudging him to be bound to the plaintiff in the same manner as the surety was bound, an action will lie against him on the return of a *fi. fa.* against the principal unsatisfied. *Crane* v. *Lewis, Sheriff*, 320.

4. The law makes it the duty of the sheriff to call upon the defendant to point out property, and, in case he is unsuccessful, to call upon the plaintiff to do the same thing. Here no such request was made from either, and, *non constat.*, that the judgment would not have been paid if a demand had been made of the defendant. *Copley* v. *Richardson*, 512.

SHIP AND SHIPPING

See Common Carrier.

SLAVES.

1. In an action against the master to recover the value of a slave belonging to plaintiff killed by a slave of defendant, proof that the slave had been convicted of the killing and had been sentenced to imprisonment at hard labor for life, and that a certain sum had been paid for him by the State to defendant, will not relieve the defendant from liability for his offence. The slave having ceased to belong to defendant, he cannot make an abandonment of him; but as the slave is represented by the sum received from the State, he may exonerate himself by paying over that amount. *Arnoult* v. *Deschapelles*, 41.

2. The provisions of section 32 of the Statute of 7th June, 1806, relative to the police of slaves, must be strictly construed, and the authority it confers upon a *freeholder* cannot be extended to any other person, and where one not a freeholder, in attempting to exercise the authority conferred by that section, shoots and injures a slaves, he will be responsible to his master in damages for any permanent diminution of the value of the slave, for the loss of his labor, and the expense of surgical treatment. *Blanchard* v. *Dixon*, 57.

3. One with whom slaves, belonging to a succession opened in another State, were deposited for safe keeping in that State, by whose laws they are personal property, and from whose possession they have been fraudulently and forcibly taken, and brought to this State and sold, has such a qualified property in them as will enable him to maintain an action for their possession against the purchaser; but he cannot recover the value of their hire while in possession of the defendant; for that he is answerable to the succession to which they belonged. *Johnson et al.* v. *Imboden*, 178.

4. Article 107 of the Constitution which guaranties to every person accused a speedy public trial by an impartial jury of the vicinage, does not apply to slaves.

5. Slaves are treated as persons by the criminal law.

6. A slave may be punished for the murder of another slave, under section 11 of the Statute of 7th June, 1806, relating to slaves; or under ss. 1, 2, of the Statute of 7th June, 1806, on the subject of crimes and misdemeanors, nothing in this last act confining it to free persons.

7. Any objections to a tribunal organized under the Statute of 1st June, 1846, for the trial of a slave, on the ground that it does not appear that the slave owners who sat on the trial were selected by the justice of the peace, nor by either of them, nor that persons who sat on the trial as slave owners, were slave holders of the parish, must be urged before the persons who sat on the trial are sworn, or they will be considered to have been waived. *State* v. *Dick*, 182.

8. After conviction it is useless to enquire by what authority the accused was arrested.

9. The provision of section 13 of the Statute of 1st June, 1846, directing that an affidavit be made before the arrest of a slave, is intended for the protection of his owner, who cannot be required to surrender his slave until facts shall have been sworn to authorizing a prosecution. The neglect of the master to insist on this right, is not an irregularity of which the slave can complain.

10. The Statute imposing on the district attorneys the duty of prosecuting slaves accused of capital crimes, does not render their presence necessary to the validity of such proceedings. All the courts of the State are empowered to appoint counsel to prosecute on behalf of the State, in the event of the absence of the district attorney. Statute of 28th January, 1817, s. 20.

11. An objection that a second justice of the peace was not present to aid in selecting the ten owners of slaves for the trial of a slave under the Statute of 1st June, 1846, must be made before the persons selected are sworn. If they are permitted to be sworn, without objection, it will be a waiver of the irregularity.

12. Where one accused of a crime is prosecuted as a slave, and he submit to a trial without objection, the fact of his being a slave will be considered so far admitted as to exempt the State from proving the slavery.

13. The Statute of 1st June, 1846, providing for the trial of slaves, does not require that the sentence should be signed by both justices of the peace. The signature of one is sufficient. *State* v. *Jerry*, 190.

STATUTES CITED.

SUBSTITUTION.

See DONATIONS.

SUCCESSIONS.

I. *Appointment of Administrators, Curators, and Executors.*

1. The widow, who is tutrix of the minor heirs, is entitled to the administration of the succession of her husband, in preference to a person not shown to have been a creditor, though the application of the former was not made until more than ten days had elapsed from the advertisement of the first application. C. C. 1035, 1037. Articles 1111 of the Civil Code, and 970 of the Code of Practice, requiring oppositions to applications for letters of administration to be filed within ten days after the publication of notice, relate to the appointment of curators of vacant successions; and cannot be considered as controlling the order of preference established for the appointment of administrators. *Succession of McKinney*, 25.

2. A woman cannot be legally appointed administratrix of the succession of her brother. It is an office which a woman is incapable of exercising. C. C. 25.

3. A woman appointed administratrix of a succession, the duties of which she is incapable by law of exercising, can be made to account only for the property that has come into her hands. *Cason et al.* v. *Cabrara, Administratrix*, 538.

4. An administrator's bond found in its proper place among the papers of the succession, though not marked *filed*, must be presumed, in the absence of other evidence, to have been acted upon by the judge in authorizing the administrator to take possession, and by the creditors in acquiescing in the appointment. *Canal and Banking Company* v. *Brown*, 545.

II. *The Administration of Successions.*

5. Though a party have no authority to receive the funds of a succession or to pay its debts, yet if the funds of the succession have been applied by him as the law would have applied them, the heir will be bound by such payments, and he will be entitled to credit for their amount in a settlement with the heirs.

6. A receipt *sous seing privé* given to an administrator on the payment of an account, is not evidence that the account was due, if the fact of its being due be disputed. *Moore et al.* v. *Thibodeaux*, 74.

7. Technical objections opposed to investigations into the conduct of administrators are entitled to little favor. *McComas, Tutrix* v. *Ronquillo, Administrator*, 123.

8. Claims of creditors which have been presented to the administrator but have not been admitted to be due, and which have not been prosecuted by suit, afford no ground for withholding from the heir money in the hands of the administrator (Statute of 25th March, 1828, § 16); nor are such creditors entitled to notice of the demand of the heir to be put in possession. *Graves* v. *Routh, Administrator*, 126.

9. The administrator of an insolvent succession represents the creditors, and not the deceased; and he may maintain an action for the benefit of the creditors, which the deceased, were he alive, could not do for his own advantage. *Judson, Administrator* v. *Connolly*, 169.

10. One to whom a note belonging to a succession, has been transferred, by the curator, irregularly, and to the detriment of the creditors or heirs of the deceased, will be considered as a trustee for them; but his possession of the note, as holder, will enable him to sue, for the purpose of arresting prescription. *Stanbrough* v. *McCall*, 322.

11. The administrator of a succession, being an officer appointed by the court for the discharge of certain duties, must be considered always present in court, like a party to proceedings there pending; and no prescription can commence to run in his favor before the homologation of his account. *Courtade* v. *Chamberlain et al.*, 368.

12. Where there are different administrators of a succession, succeeding each other, each administrator will be entitled to commissions on such portions of the estate as have been administered by him.

13. The fact that some time after the opening of a succession, a large portion of the property included in the inventory and apparently belonging to it, was claimed by the heirs of another person, and, after a protracted litigation, adjudged to belong to them, will not deprive the executors, who had, for several years, administered the property, by providing tenants, collecting rents, paying taxes, and making the repairs necessary for its preservation, of the right to charge the usual commissions upon the property. *Per Curiam:* It would be unjust to permit the real owners of the property to enrich themselves at the expense of the executors. If this equitable view be correct, it is immaterial whether they be considered as strictly clothed with seizin of the entire estate or not—whether the compensation be granted as commissions, *eo nomine*, in the technical sense of the code, or as a just remuneration for services which have enured to the benefit of the parties who have recovered the property.

14. Decision in *Succession of Mylne*, 1 Rob. 400, as to the allowance of commissions to an executor on unproductive property of the succession, affirmed.

15. The reason of the rule refusing the allowance of commissions to an executor on unproductive property of the succession is, that its administration gives them little or no trouble. Thus the mere payment of the taxes on uncultivated lands, will not authorize the allowance of a commission on their value. But there are cases in which commissions should be allowed on such property; as where a suit had been instituted to evict the executor, and he defends it successfully, thus saving its value to the succession; or where the proper public authorities require the erection of a levee to protect the uncultivated lands from inundation, which would impair their value, while that value would, on the other hand, be enhanced, in a greater ratio than the expenditure, by its construction.

16. Where a tract of land, fronting a bayou, opposite to a sugar plantation, has been used to supply timber and fuel for the purposes of the plantation, it cannot be regarded as waste and unproductive land, on the value of which the executors cannot charge a commission. *Succession of Girod*, 386.

17. The homologation of a tableau of distribution presented by the widow and administratrix of the succession of a deceased husband, recognizing a mortgage of a third person upon certain slaves belonging to the succession, and ordering its payment, is conclusive against her right subsequently to claim a legal mortgage on the same property to the exclusion of such third person.

18. Where no neglect or maladministration is alleged, and there is no prayer that the administratrix be held liable beyond the fund acknowledged or shown to be in her hands, the mere fact that the assets in her hands, at the time of the homologation of

the first tableau of distribution, and which were ordered to be applied to the payment of a mortgage claim, were sufficient at that time to pay it, will not authorize, in an opposition by the mortgage creditor to the second tableau, a judgment against the administratrix, individually, for the amount of the claim, with the interest accrued since the homologation of the first tableau.

19. Money paid by an administratrix to a creditor of a succession, out of the proceeds of property subject to a previous mortgage, cannot be recovered back by the administratrix, where, at the time of the payment, there were funds in her hands proceeding from the sale of the mortgaged property sufficient to extinguish it, though, by the *laches* of the administratrix in suffering the mortgage claim to remain unpaid and from the accumulation of interest, the fund has become insufficient to extinguish it. She cannot avail herself of her own *laches* to recover money lawfully paid. *Succession of Foster*, 479.

20. No action can be instituted against the surety on an administrator's bond, until the necessary steps have been taken to enforce payment from the principal. Statute 16th March, 1842, sec. 6.

21. Where a judgment has been rendered in an action against an administrator, removing him from office and ordering him to render an account, the institution of an action, by the heirs, against him on his bond for the amount of their inheritance, is not inconsistent with the previous action; but proceedings should be suspended until the administrator has rendered the account ordered in the first action, or until the delay allowed to him for that purpose has expired. The settlement of the account ordered would form the basis of a judgment in the second action. But where, in such a case, the plaintiff proceeds to trial, his action must be dismissed. *Kemper et al.* v. *Splane et al.*, 486.

22. The appointment of an administrator, regularly made, will not be rendered void by the subsequent discovery of a testament; nor does the authority of the administrator cease from the moment of the probate and order of execution of the will. His capacity to prosecute an existing suit will not cease, even after the executor named in the will has been duly qualified, where the latter, after praying for an inventory, takes no further steps in the administration, and does nothing whatever to indicate that he takes any interest in the prosecution of an action in which the interests of the succession are seriously involved.

23. The capacity to exercise the office of administrator, does not cease, *ipso facto*, by the bankruptcy of the individual. It may be a ground for his removal; but, of itself, does not impair his official authority. *Dwight, Syndic*, v. *Simon et al.*, 490.

24. Where a surviving spouse, who had qualified as the natural tutrix of her minor children, causes herself to be appointed, under article 1037 C. C., administratrix of her husband's succession, there being an heir of age at the opening of the succession, and creditors, and on the day of her appointment executes a bond, with surety, for her faithful administration, in a sum fixed by the judge in virtue of the discretion reposed in him by article 1037, binding herself faithfully to account over to the heirs, or to any other person having a right to receive the amounts of the succession. The amount of the bond being less than half the amount required in case of an appointment under article 1041 C. C., the bond must be considered as executed only with a view to protect the interests of the creditors who had made themselves known, and of the heirs of age, who may have been satisfied with the security which a bond of that amount offered. The surety in such a bond cannot be made liable to the minor heirs for any amount due to them from their father's succession, received and not accounted for by their mother. *Labranche* v. *Trepagnier et al.*, 558.

25. A sale of the movables of a succession made by an administrator, under an order of court for the payment of debts, though far less than their appraised value, will not render the administrator liable for the difference between that value and the price at which they were adjudicated, where the evidence shows that they were sold for their full value, and that the succession sustained no injury thereby.

26. Where an administration instead of being beneficial, has been injurious, to a succession, the administrator will not be allowed commissions.

27. An administrator who renders an account is bound to prove the items of his account by evidence, and may be held to strict proof of them by the parties interested, without a formal opposition on their part. *Succession of Lee*, 579.

III. *Of Successions generally.*

28. Where, after judgment on an opposition to an executor's account, the account is homologated, and payment ordered to be made accordingly, the opponent cannot, by a rule taken on the executors to show cause why he should not pay over the balance ascertained by the judgment to be due him, and why, on failure to produce his bank book, he should not be condemned to pay

the succession interest at twenty per cent a year on each of the sums belonging to the succession received by him from the dates of their receipt, recover interest at twenty per cent for any period anterior to the date of the judgment of homologation by which he is concluded. *Succession of Mann*, 28.

29. A demand against a surviving husband for an amount due to the succession of his wife, received by the former from sales of the separate property of the wife during marriage, cannot be cumulated with proceedings for the liquidation and partition of the succession. To cumulate such proceedings would be irregular, and tend to embarrass judicial proceedings. The demand must be made by a separate action. *Succession of Serret*, 100.

30. Where a party is placed on the tableau of distribution of the effects of a succession as a creditor for a certain sum, and the tableau is homologated, the homologation of the tableau is a judgment in favor of the creditor, which, so far as the succession is concerned, cannot be prescribed by less than thirty years. *Preston, Executor*, v. *Christin et al.*, 102.

31. The curator of a vacant succession cannot claim that the succession be completely administered before surrendering possession to the heirs, nor require security from the heirs for amounts due to the creditors before delivering possession to them; but he may require the previous homologation of his accounts, and the allowance of all credits to which he is entitled for commissions and disbursements in the administration, and the homologation of a statement of the debts due by the succession, where the heirs or legatees are not domiciled in this State and are not citizens of any State in the Union, for the purpose of ascertaining the amount of the tax due to the State under section 4 of the Statute of 26th March, 1842, which amount he is bound to retain from the heirs and pay to the State, under the penalty of his personal responsibility. *Succession of George*, 223.

32 Where it is shown that the succession of a deceased husband would not have defrayed the expenses of its administration, and that he died in a state of absolute destitution, his surviving wife cannot be made responsible for any portion of his debts, under article 2387 C. C., on proof that she took possession of certain old trunks and their contents, which the evidence renders it highly probable contained nothing but papers and old clothes, which she offered to return. *Per Curiam:* If the succession could not have defrayed the expense of its administration, she was not bound to have it administered. *Soubiran* v. *Rivollet*, 328.

33. Within the limits of the city of New Orleans, the parties interested may elect in which of the district courts they will open a succession; but when opened in one of the courts, it has the same exclusive power over it as the court of probates under the late judicial organization. An action for a debt due by the succession can be brought in no other court. *Clement, Tutrix* v. *Story et al.*, 371.

34. In a contest between the creditors of an insolvent succession, the notes or obligations of the insolvent are not conclusive proof of the debt of which they are evidence. They must be supported by such additional proof as will satisfy the judge of the fairness and justness of the claims. *Succession of Warren*, 451.

35. The prosecution of a claim for money against a succession is exclusively a probate proceeding. C. P. 924, § 13. *Pargoud* v. *Breard, Administratrix*, 517.

36. An universal legatee is only liable for his virile share of any debt due by the person whose legatee he is. *Pratt* v. *Wafer et al.*, 542.

37. Where the legatees named in a testament die before the testator, and there are no debts to pay, the appointment of an executor becomes inoperative. The appointment of an executor is a mandate, which, under our law, is limited to the execution of the legacies contained in the will, and to the payment of the debts, and the powers which it gives are to be strictly construed.

38. The appointment of an executor with the origin of the succession, is not a substantial testamentary disposition, independent of any other.

39. The seizin of an executor is a fiction of law, which does not interfere with the legal possession of the heir.

40. The admission of a will to probate, and the order given for its execution, are mere preliminary proceedings, necessary to the administration of the succession; but they do not amount to a judgment binding on those not parties thereto. *Succession of Dupuy*, 570.

SUMMARY PROCEEDINGS.

See Practice.

SURETY.

See Appeal. 3.

1. Though a plaintiff is authorized, under article 719 C. P., to issue execution against the surety on a twelve-months' bond, "in

the same manner as on a final judgment," and is thus clothed with one of the rights of a judgment creditor of the surety, he is not really such within the meaning of art. 1989. *Dawson et al.* v. *Holbert, Tutrix, et al.*, 36.

2. Plaintiff obtained a judgment on one of a series of notes, given to his testator for the price of land and secured by mortgage thereon, and defendant became the surety of the debtor in an appeal bond. The judgment was affirmed on the appeal. Pending this appeal proceedings were had by the holder of another of the series of notes, which had been negotiated by the executor, with his endorsement, and judgment was rendered therein, on his consent, under which the land was adjudicated to the holder of the second note. Plaintiff having subsequently attempted to execute his order of seizure and sale it was enjoined by the purchaser, and the injunction perpetuated. In an action by plaintiff against the surety on the appeal bond: *Held*, that defendant if bound on his appeal bond, would be entitled on paying it to a subrogation to the rights of the creditor; and that the judgment by which the mortgage rights of the plaintiff were extinguished, which rights she contends that the appeal bond was given to secure, having been rendered by her consent the surety is released. *Armor, Executrix* v. *Amis*, 192.

3. One, not a party to a promissory note, who puts his name on the back, will be bound as a surety.

4. Where two persons, not parties to a promissory note, write their names on its back, being bound as sureties, judgment will be rendered against them, *in solido*, for the whole debt. The obligation of each surety is to pay the whole debt; but this obligation is subject to the right to claim a division. Until this right is exercised, the obligation is *in solido*. C. C 3018, 3019.

5. The exception of division by a surety is a peremptory one, which must be pleaded specially. *McCausland* v. *Lyons et al.*, 273.

6. Where the principals in a bond are bound *in solido*, a judgment regularly obtained against either will be binding on their surety. *Herrick* v. *Conant*, 276.

7. A return on a *fi. fa.* that, it was impossible to make a demand upon the defendant personally, and that no property of his could be found, will authorize the plaintiff to proceed against the surety on a bond given to release property which had been sequestered.

8. Where a sheriff inserts in a sequestration bond a condition not required by law, the condition will not be binding on the surety. The bond must be construed with reference to the law under which it was taken. *Baker et al.* v. *Morrison et al.*, 372.

9. Where, in a bond executed for the release of property attached, three persons are named as principals, but the bond is signed by but one of the principals and a surety, the latter will not be bound, in the absence of evidence, to destroy the presumption that he expected the three persons named as principals to be bound as such, or to show that he would have any recourse against them, if he paid the amount. *Clements* v. *Cassilly et al.*, 380.

10. No action can be instituted against the surety on an administrator's bond, until the necessary steps have been taken to enforce payment from the principal. Statute 16th March, 1842, section 6.

11. Where a judgment has been rendered in an action against an administrator, removing him from office and ordering him to render an account, the institution of an action, by the heirs, against him on his bond, for the amount of their inheritance, is not inconsistent with the previous action; but proceedings should be suspended until the administrator has rendered the account ordered in the first action, or until the delay allowed to him for that purpose has expired. The settlement of the account ordered would form the basis of a judgment in the second action. But where, in such a case, the plaintiff proceeds to trial, his action must be dismissed. *Kemper et al.* v. *Splane, et al.*, 485.

12. Defendants who had, with others, signed a letter, addressed to a judge of probates, stating that those who signed the letter would become the sureties of a third person, in case he should be appointed administrator of a particular succession, cannot be held liable as sureties, though such third person was appointed administrator, where a bond was taken for the discharge of his duties, signed by other persons, and not by the defendants. *Canal and Banking Company* v. *Grayson et al.*, 511.

13. The failure of any of the persons named as sureties in an administrator's bond to sign it, authorizes those who have signed it to retract, but they must do so seasonably; it is too late, after the obligation of those who signed has been completed by the delivery of the bond, and after the judge, the creditors of the succession, and the administrator, have been permitted to act upon the bond, to oppose the omission of the other signatures.

14. A judgment against the principal in an action on an administrator's bond is not conclusive against the sureties, who were not parties to the action on which the judgment was rendered.

15. By the Civil Code sureties could be joined in the action against their principal, and be subjected to the same judgment; but as relates to sureties on the bonds of administrators, tutors, curators, executors, and appellants, the law has been changed by the Statute of 16th March, 1842, s. 6. *Canal and Banking Company* v. *Brown*, 545.

TAX.

1. Assessments for paving ordered to be done by an ordinance of a city corporation, made in the exercise of its legal authority, are not taxes, a statute exempting an institution from liability to taxation, being in derogation of common right, must be strictly construed. *City of Lafayette* v. *Male Orphan Asylum*, 1.

2. In sales for taxes the assessment stands in lieu of the judgment in ordinary judicial sales, and the party relying on a sale of that description is bound to show its existence and legality. *Hughey* v. *Barrow*, 248.

3. The ordinance of the General Council of the First Municipality of New Orleans, of 28 Nov., 1843, imposing a tax on all retailers of soda-water, with the exception of apothecaries, is not illegal nor unconstitutional; nor will the fact that the party had paid for a license as a confectioner, exempt him from liability for the tax. *First Municipality* v. *Manuel*, 328.

5. Under section 4 of the statute of 3d May, 1847, the tax on pedlars and hawkers is due from the time when the applicant for a license commences to sell; and, as all taxes are laid for the calendar year, a license for the year 1848, will not authorize the person obtaining it to sell under it in 1849. At whatever period of the year 1848 the licence may have been issued, it will expire with that year. Nor can one who obtains a license at any time after the commencement of the year complain that he pays as much for a license to trade during a portion of the year as others who have paid for the whole year; the inequality is of his own creation, and does not render the statute unconstitutional.

6. The collection of the taxes on pedlars and hawkers for the calendar year, is secured by the bond given in that year by the sheriff, as tax-collector, for the taxes assessed for the preceding year: thus, the taxes on pedlars and hawkers for 1848, which the sheriff receives in the course of that year as the licenses are issued, is secured by the bond given for the general taxes for the year 1847, which are assessed in that year and collected in 1848, the bond providing for the payment of all sums for which the sheriff may become legally liable during that year. *Buffington* v. *Dinkgrave*, 548.

7. Sec. 10 of the ordinance of the general council of New Orleans, approved by the mayor on the 16th December, 1846, establishing an uniform rate of taxes, on hawkers, merchants, &c., does not authorize the imposition on each partner in a banking house, or firm, making the purchase and sale of bills of exchange its principal business, of the whole amount of the tax, without regard to his residence in the State. The tax is imposed on the business, and not upon the individual members of the firm, unless they are permanent residents, or sojourners within the State. The authority of the general council to enact that ordinance depends exclusively on the statute of 12 January, 1842; and the power of the State itself to lay taxes only extends to persons and property within its jurisdiction. *Second Municipality* v. *Corning et at.*, 407.

8. By the statute of 15th March, 1830, section 11, the legal mortgage on real estate in favor of the State for taxes imposed on it, is limited to two years from the time when such tax became due. *Matter of N. O. Improvement and Banking Company*, 471.

9. Under section 37 of the statute of 3 May, 1847, providing a revenue for the support of the government, the compensation allowed to the assessor of taxes mentioned therein, is not limited to a per centage on the amount of the State taxes only. Sec. 7 of the Statute of 16 March, 1848, cannot affect this interpretation of the statute of 1847, as to the compensation of assessors for the year 1847, under the statute of that year. *Vienne* v. *Police Jury of Natchitoches*, 499.

TESTAMENTS.

See Donations.

TRANSACTION.

See Compromise.

TRESPASS.

See Damages, Ex Delicto.

TUTORSHIP.

See Minors.

UNITED STATES.

See Lands.

USUFRUCT.

The fact of a surviving spouse having taken out letters of administration on the estate of the deceased, does not in any manner affect her usufructuary rights under the statute of 25 March, 1844, s. 2. By the terms of the statute the survivor takes the usufruct of so much of the share of the deceased in the community property as may be inherited by the heirs. That share consists of the one half which belonged to the deceased, subject to the debts. With that encumbrance it descends to the heirs, from the instant of the ancestor's death. The right of the survivor to the usufruct attaches at the same moment that the right of property accrues in favor of the heirs. *Per Cur:* The usufructuary is permitted, in such a case, to retain the whole property and receive its fruits, on making the necessary advances to discharge the debts, which are to be reimbursed, without interest, at the termination of the usufruct; or he may sell property to an amount sufficient to discharge the debts, unless the heirs will make the necessary advances; and he may exercise his right upon the residue. C. C. 578, 579. Nor is the exercise of the right of the usufructuary inconsistent with that of the heirs, or of the creditors, to insist on a speedy adjustment of the debts of the community, and on a sale of property for that purpose, if necessary. *Succession of Bringier*, 389.

USURY.

See Interest.

WARRANTY.

See Sale.

WIFE.

See Husband and Wife.

WILLS.

See Donations.

WORKMEN.

See Letting of Labor, &c.

A. F. Cochrane v. *Robert Murphy*; *Hyde & Ogilsby* v. *Steamboat Yazoo*; *Burrows* v. *Nichols*; *McGinnes* v. *Mooney*; *Lapeyre, Harrispe & Co.* v. *Carlos Cruzat & Co.*; *Martin* v. *Moss, Beard, Calhoun & Co.*; *Kelly and Connyngham* v. *Bogart & Foley*; *Reynolds* v. *White*; *Hardie* v. *Church of Annunciation*; *Lapeyre, Harrispe & Co.* v. *C. Cruzat & Co.*; *J. R. Geddes, Garnishee, and R. Reynolds* v. *Carlos Cruzat & Co.*; *Calhoun* v. *Butman*; *Glendy Burke* v. *Louis Berniaud*; *J. M. Del Campo* v. *J. N. Riculfi*; *Gordon* v. *Steamboat Fanny*; *W. J. Whiting* v. *A. W. Walker*; *Mills* v. *Falvey*; *Evans Rogers* v. *C. K. Belknap and C. K. Bullard*; *Sosthene Roman, Syndic* v. *John McDonogh*; *Hiestand* v. *Wilcox*; *Ratliff* v. *Back*; *Aimé Guillet* v. *F. Marquet*; *Chapman* v. *Bond*; *McGan* v. *Hatch*; *Gomes* v. *Placencia*; *Thibodeaux* v. *Beatty*; *Daniel P. Sparks* v. *Sherrod B. Sparks*; *S. Bourgeois* v. *J. F. Jarry*; *H. Decoux* v. *Bank of Louisiana*; *E. Le Beau, wife of H. Mane* v. *B. Poydras De Lalande*; *Laborde* v. *Cain & Hereford*; *D. L. R. Orillon* v. *Labarre*; *S. H. Wilkinson* v. *Woodward*; *Thomas W. Johnson* v. *Bernard*; *Succession of Julia Bara, wife of C. Enete*; *John L. Lobdell* v. *Thomas McLin*; *Eliza Johnson* v. *Devall and S. M. Clark*; *Eliza Johnson* v. *T. Maclin*; *Victor, Hebert* v. *C. Parlange and Wife*; *Elizabeth Blanchard* v. *Julien Allain*; *Mechanics and Traders' Bank* v. *B. G. Tenney et al.*; *Joseph W. Tucker* v. *J. C. Beaty, Attorney for absent Heirs*; *Joseph L. Farmer* v. *Roberts et al.*; *Chauvin and Lewis* v. *D'Arensbourg*; *Wm. W. Pugh* v. *W. and J. J. Amonette*; *N. E. Larche* v. *Collins*; *David Stanbrough* v. *Price and L. Watson*; *Andrew Murray* v. *Parish of Tensas*; *Maunsel White* v. *Slatter*; *Felix Lewis* v. *R. W. Wynn*; *McClure* v. *Hoggatt*; *Medley* v. *Wetzler*; *Wm. G. Griffin* v. *Lewis Field*; *F. Griffin* v. *Bank of Louisiana*; *Mary Walker* v. *George W. Copley*; *Ferguson* v. *Sweeney*; *Wilford Williams* v. *William Dennis*; *Oliver B. Cobb* v. *Bruner et al*; *Succession of E. L. Whitten et al.* v. *Annette Johnson*; *Harper* v. *Moore*; *Michael Smelser* v. *Williams*; *Carpenter* v. *Featherstone and Amis*; *Lacoste, use, &c.* v. *Harper, Executor, et al.*; *Wm. Laughlin* v. *Templeton*; *Wm. Gyles* v. *McGill*; *J. L. Trask* v. *John Henderson*; *Peck & Van Burgen* v. *Van Veghten*; *Burke & Co.* v. *Larose*; *State of Louisiana* v. *Judge of First District Court of New Orleans*; *Noyes* v. *Pierpont*; *McNamara* v. *Shute*; *Turner* v. *Doyle*; *Sparrow* v. *McGill*; *Cazeneau* v. *Plummer*; *Doniphan, for use of, &c.*, v. *Stevens*; *Brown and Laud* v. *Boylan*; *Jobert et al.* v. *Pitot*; *J. M. Bach* v. *Goodrich and Dewees*; *Matter of Merchant's Bank of New Orleans praying & Co.*; *Taylor and Cassidy* v. *Butnam*; *Robertson* v. *Kelly*; *Succession of Holmes*; *State of Louisiana* v. *Hackett*; *Soubiran* v. *Rivolet*; *Hamilton* v. *Brady*; *Municipality No. One* v. *Vogtel*; *Howell & Sons* v. *C. Cruzat & Co.*; *Wilson* v. *D. Gowans*; *Arbuckle* v. *Bouny et al.*; *Creevy* v. *A. W. Walker*; *J. P. Kay* v. *Crane*; *Dwight, Curator,* v. *McMillen*; *Parmenter* v. *Amelia Rhodes, his Wife*; *Claude Rebeard* v. *James Evans*; *John F. Miller* v. *Sally Miller*; *Mrs. Antoine Delesparre* v. *Her Husband*; *Verges* v. *Bernard et al.*; *Garthwaite Pagan & Co.* v. *Ship Louisa*; *Rochereau* v. *Harrison*; *Gaillard* v. *Citizens Bank of Louisiana*; *Mercier* v. *J. F. Canonge et al.*; *Rodenburgh and Watts* v. *Lynch*; *Succession of Lagleise* v. *Heirs of Chamberlain*; *Rosine, f. w. c.,* v. *Bonabel*; *Robina* v. *Verret*; *Arnault* v. *Citizens Bank of Louisiana*; *Town of Carrollton* v. *Jones and Wife*; *Schockler* v. *Barret*; *Conand* v. *Millaudon et al.*; *Dunica and others, Owners of Steamer Maria* v. *Owners of Sultana*; *Fortier* v. *Boudar*; *Fellowes, Johnson & Co.* v. *Dodge et al.*; *Linton* v. *Stanton*; *P. Boulat* v. *Municipality No. One and Vidichi*; *Thomas* v. *Kean*; *Bond* v. *Jenkins, Curator*; *Fourcade* v. *Fourcade*; *Hebert* v. *Leftwitch*; *R. W. and E. S. French et al.* v. *Hunter*; *Vaught and McLin* v. *Paxton*; *Harker* v. *Duncongé*; *Pepper* v. *Dunlap et al.*; *Augustus, f. m. c.,* v. *Abell et al.*; *Salter and Marcy* v. *Steamboat Clarksville*; *Durant* v. *Municipality No. Two*; *Gibney* v. *Fitzsimmons*; *Blick* v. *Merritt*; *Mary L. Graves* v. *Elizabeth V. Ludeling*; *W. Reed & Co.* v. *John Frost*; *Jore* v. *Jore*; *G. Barnsley & Co.* v. *Burgess*; *Kohlman* v. *Ludwig*; *Bouligny* v. *M. White & Co. and Duvees*; *John Duggan* v. *Municipality No. Two*; *Fisher, Burgess & Co.* v. *Wheeler & Ellis*; *Ludwig* v. *Kohlman*; *Succession of Church*; *B. Gillooly* v. *Cronan and J. Greely*; *Stacy* v. *W. C. Hamner*; *Succession of J. M. White*; *Walton, Sanford & Co.* v. *Rodman, Bacon & Co.*; *Carreras* v. *His Creditors.*

141

Not having any lists of the cases decided at other places than New Orleans, and no possibility of getting them in time for this volume, the cases not reported which were decided at those places are not included. WM. W. K.